

**AGENDA**  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Room WW55**  
**Monday, January 16, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>03-0101-1101</u></a>	Rules of the State Athletic Commission: A Pending Fee Rule to adjust fees to provide for additional revenue.	Roger Hales, Administrative Attorney
<a href="#"><u>15-1001-1101</u></a>	Rules of The Idaho State Liquor Division (p. 2): A Pending Rule to make changes to clarify ambiguous language, eliminate unnecessary terms, and eliminate or modernize obsolete terms/language relating to day-to-day business operations.	Jeffrey Anderson, Director
<a href="#"><u>34-0402-1101</u></a>	Rules regarding Corporate Name Availability (p. 22): A Pending Rule to clarify business entity name requirements and to reflect the alternatives made possible by certain advancements in technology.	Jeff Harvey, UCC Supervisor, Office of the Secretary of State
<a href="#"><u>34-0501-1101</u></a>	Rules Governing Farm Products Central Filing System (p.35): A Pending Rule to add the county code and unit code tables to its rules.	Jeff Harvey, UCC Supervisor, Office of the Secretary of State
<a href="#"><u>38-0406-1101</u></a>	Rules Governing Prequalification of Contractors on Capitol Building Projects (p. 43): A Pending Rule to repeal IDAPA 38.04.06 in its entirety.	Dennis Stevenson, Administrative Rules Coordinator
<a href="#"><u>52-0103-1101</u></a>	Rules Governing Operations of The Idaho State Lottery (p. 46): A Pending Rule to discontinue an antiquated practice as a result of Instant Ticket Automation.	Jeffrey Anderson, Director
<a href="#"><u>54-0101-1101</u></a>	Rules regarding Reports for Public Bond Issues (p. 54): A Pending Rule to repeal IDAPA 54.01.01 in its entirety.	Laura Steffler, Chief Deputy Treasurer

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Vice Chairman Fulcher  
Sen Davis  
Sen Hill  
Sen McGee

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, January 16, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, McGee, Winder, Lodge, and Stennett

**ABSENT/ EXCUSED:** Senators Malepeai

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present and welcomed the Committee Members to the first meeting of the 2012 session. He introduced **Rebekah Grad**, the Committee page, stating that she is the first page to be attending college full time while serving in the Senate. **Rebekah** provided a few remarks about herself and about serving in this capacity

**Chairman McKenzie** passed the gavel to **Vice Chairman Fulcher** to conduct the review of the pending rules.

**03-0101-1101**

**Fee Rule from the State Athletic Commission** to adjust fees and provide for additional revenue. **Roger Hales**, Administrative Attorney, explained the reasons for the fee adjustments. The Athletic Commission is funded in two ways: 1) 5% of the gate and 2) the generation of fees through licenses issued to buyers, promoters, and others involved in the industry. The Bureau of Occupational Licenses (IBOL) has a single account, supports about 28 professions, and currently the other boards are funding the Athletic Commission which shows a negative (\$168,000). The fee increases for that particular industry is an effort to make the Athletic Commission self supporting. These fee increases are designed to generate about \$43,000 per year. The Athletic Commission expenses have stabilized at about \$70,000 which is approximately \$35,000 less than is raised in revenue every year.

**Vice Chairman Fulcher** stated that the overall target is \$43,880. Can you provide the rationale behind the individual fees? **Mr. Hales** responded that the number of individuals being licensed is considered to determine the increase in revenue. It is difficult to raise the combatant fees which increases from \$30 to \$150 but most licensees are fighters. Larger fee increases are recommended for noncombatant licensees.

**Vice Chairman Fulcher** called for questions from the committee.

**Chairman McKenzie** said his concern was, with the huge across the board percentage increases the combatants. The large fee to participate will prevent people from participating. It might be wise to reduce the increase for them in one year and apportion the increases to those noncombatant licensees who can use it as a line item cost. **Mr. Hales** responded that there are benefits that the fighters receive from this regulated program. Promoters are forced to provide health insurance policies for the fighters during the event and physicals prior to licensing. Doctors and ambulances are available on site during an event to provide a safe environment in which to fight.

**Senator McGee** observed that there has been a proliferation of the Mixed Martial Arts (MMA) events in the Treasure Valley. Therefore, it should generate more income due to number of events. **Mr. Hales** said that the financial burden imposed by the MMA is due to the regulation of the MMA sports. There were 21 events in 2009; 30 in 2010; and 19 in 2011; and an increase from 3 in 2008.

**Senator Stennett** referred to the amount expenses exceeded revenue over the past three years. Have expenses been determined for this year and have the fees been set accordingly? **Mr. Hales** stated that expenses are expected to come in around \$75,000-\$80,000 this fiscal year ending in June and have been the same for the past two years. Beyond the fee increase, the Athletic Commission is looking at other ways to minimize business expenses. However, there are some things that can't be controlled i.e., investigations and violations of rules/regulations. **Senator Stennett** pointed out that the fee increases will not cover all the expenses. How is that to be addressed and can the number of events be reduced to control expenses? **Mr. Hales** responded that there is the possibility of: ending the regulation of the sport; outlawing these types of events; or, looking at other funding mechanisms. When the Athletic Commission was created it received general fund money. Now it is a dedicated fund agency that has to rely on its own revenue. If an application for an event is submitted by a promoter, the Athletic Commission is obligated to process it.

**Senator Davis** asked if 2008 was the year the Athletic Commission was moved to the current bureau; and, how many years will it take to erase the negative balance? **Mr. Hales** said that JFAC moved it in 2006 and speculated that it would take a number of years depending on the number of events, regulating activity, and other types of solutions initiated. **Senator Davis** summed up the dilemma: the Athletic Commission is in trouble because the Legislature stipulated that it should be self supporting but that hasn't worked out. Other than the fee increase, solutions have not been found that can be brought to the Legislature with confidence. The Committee should either approve this fee rule and alleviate some of the problem or don't "tie our hands and tell us to be a self supporting commission." **Mr. Hales** responded "elegantly stated."

**Senator Hill** asked how can bills be paid when there is a negative balance. **Mr. Hales** explained that the IBOL has a single fund and the revenue from all the boards they support goes into that fund. They help support each other. The IBOL plans to bring an overall \$50,000 fee decrease to the Legislature this year. However, if this fee increase is not approved, that decrease may have to be revisited. **Senator Hill** asked if 5% of the gate as a funding source is set statutorily; and, was that increase percentage considered as a resource in lieu of or in conjunction with a fee increase. Who would pay that? **Mr. Hales** said that an increase in the 5% gate could be brought forward this year. It would be the promoter who pays the gate percentage.

**Vice Chairman Fulcher** asked what has happened since the IBOL took over this commission: what has happened with staff, administration, and expenses during that window of time? **Mr. Hales** stated that there have been a proliferation of MMA events. Until 2008-2009, these were not regulated and that was thought to be a potential public concern. Regulating the MMA is costly. These events take place throughout the state and if a deputy commissioner isn't close by, IBOL has to send an investigator to be present at each event. Expenses were at \$100,000 in 2009 moving down to \$73,000 in 2010 and stayed in that range. The Athletic Commission has an appointed commissioner. Deputy commissioners serve without remuneration and a stable IBOL staff supports that operation.

**Senator Lodge** inquired if these fights are profitable. **Mr. Hales** stated "for the promoter." **Senator Lodge** asked if the Athletic Commission as a whole has been included in determining the fee increases and what would it take to change the gate percentage? **Mr. Hales** reported that the fee increases have received support. They have been posted on the website, there have been comments, and the Athletic Commissioners have been supportive. The pay-per-view aspect is another option. It would take a law change to adjust the gate percentage.

**Chairman McKenzie** noted that the biggest increase burdens the participants when they make the least amount of income. He requested some statistics like the number of participants who are amateurs, what the gates are, and more information about a tax on pay-per-view. **Mr. Hales** answered that there are roughly 250 combatants. Those numbers will be provided to the Committee.

**NOTE:**

**Senator Winder** thanked Mr. Hales for his efforts toward making this self supporting. Even though these are significant increases, those participating in a potentially physical, violent, and damaging sport should bear the brunt of that expense.

**Senator McGee** asked if there has been any negative input against the rule. **Mr. Hales** was not aware of any opposition although he hasn't attended any of the meetings. He deferred to **Tom Katsilometes**, Athletic Commissioner.

**Mr. Katsilometes** stated that the Athletic Commission has been in existence since the early 1970s under the Department of Administration and moved to IBOL in 2006. At that time, MMA was added due to an effort to ban it from the state. At that time, before regulations existed, one of the participants was killed. Since that time, with regulation, there have been no serious injuries. The nature of the sport requires more investigations which requires more time and energy from the IBOL. The promoters will not like the increased fee; expenses have plateaued out; and, the promoters are making good money. Maybe the promoters should pay more fees than the fighters.

**Bryan R. Carter**, citizen, City of Meridian, testified in support of the increase in fees.

**MOTION:**

**Senator Winder** moved, seconded by **Senator Hill**, to adopt the pending fee rule **03-0101-1101**.

**Vice Chairman Fulcher** called for further discussion.

**Chairman McKenzie** said that he could not support the motion due to his concern about the 500% increase in fees for those least able to pay. Increased revenue could come from those making a profit. This sport will continue to grow unless deterred by putting a high burden on the participants.

**VOTE:**

The motion carried by **voice vote**.

**Vice Chairman Fulcher** called Jeffrey Anderson to present the rule.

**15-1001-1101**

**Rules of the Idaho State Liquor Division** to update/modernize the administrative rules.

**Jeffrey Anderson**, Director, Idaho State Liquor Division (ISLD), introduced Tim Davis, Deputy Attorney General. With the exception of a name change, the administrative rules have not been updated since 1997. This pending rule is a housekeeping measure that makes changes to clarify ambiguous language, eliminate unnecessary terms, and eliminate or modernize obsolete terms/language relating to day-to-day business operations.

**Vice Chairman Fulcher** referred to *Product Line* on page 5 and asked what other items would be offered? **Mr. Anderson** said that others would be table wines manufactured in Idaho, high proof wines, and related items such as mixes.

**Chairman McKenzie** referred to *the removal of the specifications for defining state stores and contract stores* on page 7: Why were those specifications included in this rule? **Mr. Anderson** stated that those two specifications represent past policy. Last year an Office of Performance Evaluation Audit recommendation was to examine whether or not state stores could be converted to contract stores. One element was to locate state stores in larger communities because that is where they could become most profitable. Defining what a large community is and what profitability is are examined all the time. In this instance, criteria and policies are being developed to assign state stores and determine whether or not it should be a contractor.

**Senator Lodge** referred to *Delisting....The decision to retain or delist a product rests solely with the Director* on page 5, are there other people helping the Director to make that decision? **Mr. Anderson** explained that the authority to list or delist a product has always rested with the Director. There is a group of people that review ideas of products or potential listing or delisting and make recommendations to the Director. There is not a body that oversees this activity.

**Senator Lodge** asked if Idaho wines were being removed from Idaho liquor stores. **Mr. Anderson** responded that they will continue to carry Idaho table wines. When that practice began, the number of wineries was limited and now approaches 50 or more. The dispensary does not have a temperature controlled warehouse and some of the varieties do not keep very well in the summertime. For this reason, a review is being made of the types of wine that are carried throughout the state network with the focus on those the public use the most. Then the product will not have to be destroyed due to spoilage.

**Senator Davis** referred to *Delisting* on page 5, why is there an affirmative duty in the definition section? Those items might be structurally pulled out of the definition section and put elsewhere. Referring to page 7 regarding city size, there was a concern that by striking smaller city and larger city language, the effect would be that current contract distributors in smaller cities could be adversely impacted by giving the Director complete discretion to disallow any contract distributor and put in state run/owned/operated stores without being sensitive to those contract stores who have made a large investment. **Mr. Anderson** stated that the ISLD is a dedicated fund agency that requires the enterprise to operate as efficiently as possible. The contractor agreements are annual agreements that are renewed each year. A large investment is not required by the contractor since the product is shipped to them on consignment. The agency does not have an interest in expanding the number of state owned stores in communities where they are not profitable.

**Vice Chairman Fulcher** asked if there was further testimony.

**Jan Sylvestor**, citizen, Meridian, questioned several sections of the rules: "circular definitions"; the change from table wine to just wines and the differences—it is not clear what they are selling in the stores; and, there is a reference to the Tax and Trade Bureau of the Internal Revenue Service. There were also questions regarding suppliers and supplier permits. **Mr. Anderson** explained that wines, as defined in statute, are table wines and higher proof or dessert wines. Higher proof wines must be sold by a liquor store and table wines are restricted to those manufactured in Idaho. Reference is made to distributing stations as contract stores, not state owned stores.

**Senator Hill** commented that back in 2002, the Department of Alcohol, Tobacco, and Firearms, which is being struck, was in two sections. One was the Department of Justice which remained the Bureau of Alcohol, Tobacco, and Firearms (explosives were added). The Tax and Trade Bureau of the Internal Revenue Service remained under the Internal Revenue Service. This change coincides with the 2002 change.

**Vice Chairman Fulcher** stated that pending rule **15-1001-1101** was before the Committee.

**MOTION:** **Chairman McKenzie** moved, seconded by **Senator Davis**, to adopt rule **15-1001-1101**.

**VOTE:** The motion carried by **voice vote**.

**34-0402-1101**

**Rules Regarding Corporate Name Availability** to clarify business entity name requirements and to reflect the alternatives made possible by certain advancements in technology. **Jeff Harvey**, UCC Supervisor, Office of the Secretary of State, introduced Jim Hurst, Chief Deputy, Secretary of State. **Mr. Harvey** stated that over the years, language has changed from a deceptively similar corporate name to distinguishable on the records of the Secretary of State when determining a valid business entity name. The data base requires business names to be entered in a particular way and there is the statutory obligation to meet various criteria for business entity names. These rules are designed around those two considerations to determine if a business entity name being registered is distinguishable on the records.

**Senator Davis** provided a brief history beginning with the 1999 change. The historic standard of "deceptively similar" resulted in the rejection of similar names although the business' may have been miles apart. The 1999 change softened that standard to allow people some latitude in naming their companies. With that statutory change, why is this administrative rule necessary or is the rule being modified to catch up with the statute? **Mr. Harvey** replied "we're catching up." These rules have not been amended since 1993.

**Senator Stennett** asked if it is more difficult to police business names given the amount of technology. **Mr. Harvey** answered that technology has made it somewhat easier. These rules are really guidelines for those who want to register businesses to better understand the state system and how it operates so that they know the statutory obligations of creating a business name and how it will be compared to other business names. As more and more businesses are created and the ability to create a unique name is more difficult, technology makes the comparisons more efficient.

**Vice Chairman Fulcher** asked if there was anyone in the audience that would like to speak to this rule. Being none, **34-0402-1101** is before the Committee.

**MOTION:** **Senator McGee** moved, seconded by **Chairman McKenzie**, to adopt rule **34-0402-1101**.

**VOTE:** The motion carried by **voice vote**.

**34-0501-1101**

**Rules Governing Farm Products Central Filing System** to add the county code and unit code tables to its rules. **Mr. Harvey** explained that legislation passed during the 2011 session removed the codes from this rule. Afterward, concerns were raised that there was a potential for legal problems in the future. This legislation puts those county codes and unit codes back into the rule. **Senator Davis** referred to the county code chart on page 41 noting that there were county codes for counties in the surrounding states, i.e., Oregon, Washington, Utah, etc. Is this because we have people farming on both sides of the border and this is one way lenders get those codes. Does every county bordering our state have a county code within the table shown in the rule? **Mr. Harvey** speculated that USDA requires that an accounting code be on record for every piece of collateral that is listed on a finance statement no matter where it resides. There would be a code because if a county is not in the table, it is given a code of 99.

**Vice Chairman Fulcher** asked for further comments or questions. Being none, **34-0501-1101** is before the Committee.

**MOTION:**

**Senator Davis** moved, seconded by **Senator Lodge**, to adopt rule **34-0501-1101**.

**VOTE:**

The motion carried by **voice vote**.

**38-0406-1101**

**Rules Governing Prequalification of Contractors on Capitol Building** to repeal **IDAPA 38.04** in its entirety. **Dennis Stevenson**, Administrative Rules Coordinator, Department of Administration, explained that this rule was used during the capitol building project. The project has been completed and the rule is no longer necessary.

**MOTION:**

**Senator Lodge** moved, seconded by **Senator Stennett**, to adopt rule **38-0406-1101**.

**VOTE:**

The motion carried by **voice vote**.

**52-0103-1101**

**Rules Governing Operations of The Idaho State Lottery** to discontinue an antiquated practice as a result of Instant Ticket Automation. **Mr. Anderson** stated that there is only one change; *Ticket Stamping* on page 52. Technology has allowed the lottery to do Instant Ticket Automation where tickets can be sold, redeemed and validated at every retailer. This rule is obsolete.

**Vice Chairman Fulcher** asked for any testimony on this rule.

**MOTION:**

**Chairman McKenzie** moved, seconded by **Senator Stennett**, to adopt rule **52-0103-1101**.

**VOTE:**

The motion carried by **voice vote**.

**Vice Chairman Fulcher** recognized **Senator Winder's** request for indulgence. **Senator Winder** stated that he had seen an ad on television increasing the cost of a lottery ticket from \$1.00 to \$2.00 and that it would improve the chance of winning. How does that work? **Mr. Anderson** stated that the jackpot odds will be better because the number of balls have changed. There will be the same number of white balls and the number of red balls will be reduced from 39 to 37.

**Vice Chairman Fulcher** introduced Laura Steffler to explain the last rule.

**54-0101-1101**

**Rules Regarding Reports for Public Bond Issues** to repeal **IDAPA 54.0101** in its entirety. **Laura Steffler**, Chief Deputy, State Treasurer's Office, requested that this rule be repealed because there is now a national data base that collects the same debt information the Treasurer's Office has been collecting. Corresponding rules have already been repealed.

**Vice Chairman Fulcher** asked if there were questions from the Committee or if there was anyone else who would like to speak to this rule.

**MOTION:** **Senator McGee** moved, seconded by **Senator Stennet**, to adopt **54-0101-1101**.

**VOTE:** The motion carried by **voice vote**.

**Vice Chairman Fulcher** announced that the rules on today's agenda are complete and returned the gavel to **Chairman McKenzie**.

**ADJOURNMENT:** **Chairman McKenzie** thanked the Committee for getting through all the rules and, being no further business, the meeting adjourned at 9:27 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary



**AMENDED #1 AGENDA  
SENATE STATE AFFAIRS COMMITTEE  
8:00 A.M.  
Room WW55  
Wednesday, January 18, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>SJR 102</u></a>	<b>PROPOSING AN AMENDMENT TO SECTION 5, ARTICLE X, OF THE CONSTITUTION OF IDAHO</b> to clarify that the Board of Correction's duty to supervise adult probation extends only to felony probation.	Senator Darrington
<a href="#"><u>RS20930</u></a>	<b>RELATING TO THE FILING OF FOREIGN JUDGEMENTS</b> ; amending Section 10-1302, Idaho Code, to revise where copies of foreign judgements shall be filed.	Senator McKenzie
<a href="#"><u>RS20964</u></a>	<b>RELATING TO A MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM</b> ; limits the financial burden on individual Idahoans as a result of mandatory emission testing.	Senator McKenzie

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Vice Chairman Fulcher  
Sen Davis  
Sen Hill  
Sen McGee

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, January 18, 2012  
**TIME:** 8:00 A.M.  
**PLACE:** Room WW55  
**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, McGee, Winder, Lodge, Malepeai, and Stennett  
**ABSENT/ EXCUSED:**  
**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present and called on **Senator Darrington** to introduce **SJR 102**.

**SJR 102** **PROPOSING AN AMENDMENT TO SECTION 5, ARTICLE X, OF THE CONSTITUTION OF IDAHO** to clarify that the Board of Corrections' duty to supervise adult probation extends only to adult felony probation.

**Senator Darrington** opened his remarks stating that It is unusual to have a one word constitutional amendment. Currently, the Idaho State Constitution, Article 10, Section 5 is crystal clear about "the control, direction, and management of the penitentiaries of the state, their employees and properties, and of adult probation and parole," when referring to the Board of Corrections (Board). A system has been established for probation supervision and misdemeanants in the counties for a fee. The counties, in most parts of the state, have been using this system since 2008. This system has had some positive impact on the prison system as well as the specialty courts. Recently, the matter of good constitutional ground has been questioned. A group was organized to work out a solution to make sure they were on good grounds. After reviewing several alternatives, adding the word "felony" as a limiting factor in the Constitution regarding the powers of the Board, will allow them to carry on with the Misdemeanor Supervision Program. This change has the full support of the Governor's Criminal Justice Commission. **Senator Darrington** deferred to Mr. Panther.

**Senator Winder** asked if there ever was a time when there would be a juvenile in this system. **Senator Darrington** responded that occasionally there would be a juvenile (<18) on probation.

**Paul Panther**, Chief of the Criminal Division (Division) of the Attorney General's Office, discussed the history of adult probation. Article 10, Section 5, ratified in 1942, grants the Board supervision over adult probation. Prior to that time, it didn't address the issue of probation. In 1940, the Governor appointed a prison committee to report on the state of the correctional system in Idaho. It recommended full time probation and parole officers to serve the counties of the various judicial districts and it did not distinguish between misdemeanor and felony probation although it distinguished between juvenile and adult probation. In 1947, the Legislature enacted Idaho Code 2219 that spelled out that the Board was to supervise all persons placed on probation. In 1993, that statute was amended that the Board was to supervise "all persons convicted of a felony" placed on probation. Subsequently, there were other statutes that were added to deal with misdemeanor probation at the county level, one of those in 2008 expressly authorized the counties to supervise misdemeanor probation. An earlier statute (1998) authorized counties to collect costs from misdemeanor probationers. Some of this legislation accretion seems to

be contradictory to the express language in the constitutional provision. None of the statutes have been found to be unconstitutional although there are some potential legal challenges to the counties' authority to supervise misdemeanor probation.

**Chairman McKenzie** called for questions from the committee.

**Senator Davis** asked if Idaho can contractually and constitutionally contract with counties to have supervisory power. **Mr. Panther** said there is a statute that expressly gives the Department the authority to contract with counties, other states, and private entities regarding the incarceration of prisoners. There isn't anything that expressly grants authority for probation supervision. Article 10, Section 5, Idaho Code says that the Board's duties, as prescribed by law, can be applied to probation. Constitutionally, it would apply if it had the Legislatures prescription by law but it is not clear if it could do it on its own initiative. **Senator Davis** asked why a statute should not be run in parallel to this action. **Mr. Panther** changed hats and spoke as a person sitting on the Criminal Justice Commission (Commission). It is the recommendation of the Commission that the fastest, clearest, and easiest way to fix this problem for everybody concerned was just to amend the constitution and essentially ratify all the existing statutes then proceed with the system as it is. The Commission felt that this action was consistent with the system. **Senator Davis** commented that having the statute in place might give the Department and the State something to rely on until after the public had a chance to be heard. **Mr. Panther** agreed that there could be some kind of legal action between now and November that could result in an injunction which could affect the current system.

**Senator Hill** stated that there didn't seem to be a down side to this resolution. However, some bail bond company thought there was a problem. What was their motivation to spend the time and money to take action? **Mr. Panther** said he read the court's decision but didn't pursue any further investigation. **Senator Hill** asked for some of the reasons someone would challenge this change. **Mr. Panther** provided a scenario. If an individual was on misdemeanor probation and his probation officer gave him discretionary jail time then that individual could file a habeas corpus petition in the county court challenging the constitutionality of being supervised by the person who put him in jail.

**Dan Chadwick**, Executive Director, Idaho Association of Counties (IAC); also, a member of the Commission and a member of the subcommittee that crafted the constitutional amendment, spoke in support of sending **SJR 102** to the Senate floor with a do pass recommendation. The arguments have been outlined very well. In response to **Senator Hill's** question about consequences, the State will end up with different opinions in different judicial districts as to whether or not it is constitutional until it reaches the Idaho Supreme Court. The State will also end up with a system with unsupervised probation. We want to maintain this system that has been created. It has a good source of funding, it is practical, and it converts people out of the felony system. By acting now, this constitutional amendment will fix the problem. **Mr. Chadwick** asked for the Committees support.

**Senator Davis** asked what the fiscal impact to the State would be if this did not become law and misdemeanor probation by counties was determined to be unconstitutional. **Mr. Chadwick** responded that it would be substantial. There are 14,000-16,000 probationers in the State with fees ranging anywhere from \$25/month to \$75/month which are set by the administrative district judge. In addition, there are the dollars spent to collect. It could cost the state hundreds of thousands of dollars if not millions. The state would have full responsibility to administer any misdemeanor probation system.

**Senator Darrington** closed by saying that other solutions were discussed but they were not as straight forward as this amendment. They will discuss **Senator Davis'** suggestion concerning statutes, but if this amendment passes by a 2/3 vote in both houses, it could be on the November ballot and that is not to far away.

**Chairman McKenzie** asked for the will of the Committee for **SJR 102**

**MOTION:** **Senator Davis** moved, seconded by **Senator Lodge**, to send **SJR 102** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote.

**Chairman McKenzie** thanked **Senator Darrington** and passed the gavel to **Vice Chairman Fulcher** in order to present two RSs.

**Vice Chairman Fulcher** asked **Chairman McKenzie** to present **RS20930** and **RS20964**.

**RS20930** **RELATING TO THE FILING OF FOREIGN JUDGEMENTS** to amend Section 10-1302, Idaho Code to revise where copies of foreign judgements shall be filed.

**Chairman McKenzie** explained that both RSs on the agenda today are brought forward by constituents. Before either RS goes on to a hearing, more information would be required by other involved persons.

**RS20930** - Foreign judgements in the state of Idaho. Under current law, a company or person can get a judgement against an Idahoan or Idaho business anywhere in the country but they must show that they have personal jurisdiction over that person with a basis to bring him to court. This is generally done by the attorney filing the lawsuit. Many times, a person goes into default because the judgement was filed in a foreign jurisdiction. Before any property can be attached, the judgement must be filed in Idaho. Current law allows judgements to be filed in any county within the state regardless of where the Idaho resident lives. That is different than the general venue statute, Idaho Code, 5-404, that outlines where lawsuits can be filed; it typically requires them to be filed in the county of residence. The Foreign Judgement Recording Act does not require that. That can be a hardship because there are rights to challenge that judgement. This change would require that the judgement would be entered in the county in which the persons lives but if that cannot be reasonably determined, then it could be filed in any district court in any county in the state. If **RS20930** is printed, the plan would be to get input from the Judiciary, the Bar Association, and the Uniform Law Commissioners. It seems like a reasonable issue to review.

**MOTION:** **Senator Davis** moved, seconded by **Senator Lodge**, to send **RS20930** to print.

**Senator Stennett** asked if this is a different type of procedure than those from out of the country. **Chairman McKenzie** stated that when "foreign" is used as in the context of this RS, it is generally within the United States but outside state borders. The difference would be clarified if this goes forward.

**Senator Davis** explained that the Uniform Foreign Money Judgement Recognition Act defines a foreign state to mean a state of the United States. There are different approaches to domestic and international judgements. Also, this has some modest overtones with child custody issues that are covered by The Uniform Child Custody Jurisdiction Enforcement Act and there are separate procedures to deal those international and instate conflicts. What **Chairman McKenzie** is discussing is where there may be judgements for state aid and they want to enforce that judgement in the state of Idaho.

**VOTE:** The motion carried by voice vote.

**RELATING TO A MOTOR VEHICLE INSPECTION AND MAINTENANCE**

**PROGRAM** limiting the financial burden on individual Idahoans as a result of mandatory emission testing.

**Chairman McKenzie** stated that this only relates to Ada and Canyon Counties; it would directly affect the Chairman but it was brought up by his constituents. Both counties have inspection programs related to vehicle emissions. If a vehicle doesn't pass inspection, it must be repaired. There is a waiver for the first year then if the vehicle does not pass again, whatever repairs necessary to pass inspection must be made regardless of the cost. That is a concern. This RS spreads the cost of the repairs over a period of time. The social good is related to air quality within the state. However, it seems unfair that the burden is imposed on the least affluent individuals who could be facing an open ended liability. Most people who are driving vehicles that this would apply to are unable to afford a newer vehicle. Unemployment in Canyon County is 10.3%, there are record food stamps, and household income is low. If **RS20964** is printed, input would be requested from the Department of Environmental Quality, and various industries because air quality standards affect their ability to manufacture. This is a request to print in recognition of the cost that is borne by those individuals who drive older, impaired vehicles.

**Senator Stennett** stated that, as the law stands, there is not a requirement to spend any more than \$250 in a calendar year then they are given a waiver to drive for a year. The next year there must be an effort to bring the vehicle into compliance up to \$250 and so on. Is that the current system? **Chairman McKenzie** responded that the current practice is if a vehicle doesn't pass inspection and the owner makes repairs but the vehicle still doesn't pass, there is a waiver for a year and then, if it isn't in compliance, a registration will not be issued. **Senator Davis** asked what could be anticipated on the federal level if this should come into law – how unhappy will they be? **Chairman McKenzie** said that the issue for the state would be, in that small category of older vehicles that this applies too, what would be the contribution between taking those vehicles off the road or allowing the owner to have the provision where they spend a certain amount to fix it? It is unknown how many vehicles would get fixed within that dollar amount and what the contribution to air quality would be. Typically, vehicles within the state are 7-8 years old on average. Idaho has an older fleet than most states. This would have to be determined before the bill would go to a full hearing.

**Senator McGee** stated that the L. A. Times reported that the average age of cars on the road in the US today is a record 10.8 years, so it is more dramatic than has been described. This certainly deserves discussion.

**MOTION:** **Senator McGee** moved, seconded by **Senator Winder**, to print **RS20964**.

**VOTE:** The motion carried by voice vote.

**Vice Chairman Fulcher** thanked **Chairman McKenzie** and passed that gavel back to the Chairman.

**ADJOURNMENT:** **Chairman McKenzie** thanked the Committee members for their attendance and, being no further business, the meeting adjourned at 8:40 p.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

AGENDA  
**SENATE STATE AFFAIRS COMMITTEE**  
8:00 A.M.  
Room WW55  
Friday, January 20, 2012

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">RS20977</a>	A Senate Resolution Recognizing, Honoring and Commending Jeannine Wood and Rusti Horton for their years of service to the Legislature of the State of Idaho.	Senator Bart Davis
<a href="#">31-1101-1101</a>	Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission: A Pending Rule to incorporate various national safety codes as applicable to the electric, telephone, and natural gas utilities.	Paul Kjellander, President, Public Utilities Commission
<a href="#">31-7103-1101</a>	Railroad Safety and Accident Reporting Rules: A Pending Rule to adopt the 2011 edition of the Code of Federal Regulations.	Paul Kjellander, President, Public Utilities Commission
Presentation	Idaho Parks and Recreation: Defining How the Idaho State Passport Program would work in an effort to fund Idaho's State Park system.	Nancy Merrill, Director, Idaho Department of Parks and Recreation
Presentation	Idaho State Historical Society: Proposal to Combine State Records and Local Government Records Under Single Agency Management	Janet L. Gallimore, Executive Director, Idaho State Historical Society

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Vice Chairman Fulcher  
Sen Davis  
Sen Hill  
Sen McGee

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, January 20, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Senators Davis, Hill, McGee, Winder, Lodge, Malepeai, and Stennett

**ABSENT/ EXCUSED:** Vice Chairman Fulcher

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present and welcomed **Senator Davis** to present **RS20977**.

**RS20977** **A SENATE RESOLUTION RECOGNIZING, HONORING, AND COMMENDING JEANNINE WOOD AND RUSTI HORTON** for their years of service to the Legislature of the State of Idaho.

**Senator Davis** explained that this RS for a Senate Resolution is at the request of the Pro Tem to express the desire of the Senate to honor Jeannine Wood and Rusti Horton in contemplation that on Tuesday morning it will go straight to the 10th Order of Business for the Senate's consideration. It will not come back to the Committee.

**MOTION:** **Senator McGee** moved, seconded by **Senator Stennett**, to print **RS20977**.

**VOTE:** The motion carried by voice vote.

**Chairman McKenzie** announced that the last two rule dockets will be presented by **Paul Kjellander** from the Public Utilities Commission (PUC).

**31-1101-1101** **SAFETY AND ACCIDENT REPORTING RULES FOR UTILITIES REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION** to incorporate various national safety codes as applicable to the electric, telephone, and natural gas utilities.

**Paul Kjellander**, President, PUC, explained that both sets of rules in front of the Committee are updates from the national level and both are being adopted by reference. **Rule 31-1101-1101** changes relate to the Safety Accident and Reporting Rules which are updated on the national level every three years. Idaho Power submitted the only comment and it was in support of the changes. Rule 101 adopts changes to the 2007 National Electric Safety Code to clarify changes to electric grounding practices. Rule 201 focuses on Federal Pipeline Safety Regulations to include the use of current technologies and data collection for natural gas pipelines. Rule 202 increases the International Fuel Gas Code as it relates to operations near flood hazards. Rule 203 also addresses flood hazards regarding placement of mechanical equipment. That reflects the changes in these reporting rules.

**MOTION:** **Senator Lodge** moved, seconded by **Senator Malepeai**, to adopt **31-1101-1101**.

**VOTE:** The motion carried by voice vote.

**31-7103-1101** **RAILROAD SAFETY AND ACCIDENT REPORTING RULES** to adopt the 2011 edition of the Code of Federal Regulations.

**Mr. Kjellander** commented with "tongue in cheek" that saccharin has been removed from the hazardous substances list for transport.

**MOTION:** **Senator McGee** moved, seconded by **Senator Winder**, to adopt **31-7103-1101**.

**VOTE:** The motion carried by voice vote.

**Chairman McKenzie** announced that **Nancy Merrill** from The Department of Parks and Recreation is going to explain the Passport Program.

**PRESENTATION:** **Nancy Merrill**, Director, Idaho Department of Parks and Recreation (Department), said that the Passport Program is a way to make the Department more self sufficient. **Director Merrill** introduced Dave Ricks, Deputy Director and Jennifer Biazek, Communication Manager.

Over the past few years, the Department has had a significant reduction in its budget and looked for dedicated funding sources to allow the Department to be self sustaining. The result has been the Idaho State Parks Passport. Today's objective is to provide information and increases understanding about the program. More than 4.5 million people visit Idaho parks annually. **Director Merrill** explained that this agency is an agency reinvented. She outlined the strategy behind the program and how it would move them towards a long-term, sustainable solution. The program is constitutionally viable. It opens up a broader user base resulting in increased revenues. The program acts in conjunction with the vehicle registration process although it is not a part of that process. An RS is being presented in the House at the end of January and the hope is to have it printed into a bill. The presentation, white paper, and full description of the Passport Program are attached as a part of these minutes.

**Chairman McKenzie** asked if there were any questions from the Committee.

**Senator Stennett** asked if a person does not choose to participate in the Passport Program, can they still follow the current pay at the gate procedure? **Director Merrill** answered that the \$5.00 can still be paid at the gate if someone does not pay the \$10.00 for the Passport. The \$40.00 passport will still be available to out-of-staters. There will be a transition time to incorporate the Passport Program into the system for those that have already registered their vehicles.

**Senator Lodge** said that her question regarded those vehicles that were already registered. Some of those are registered over a two year period of time. How will that be addressed? **Director Merrill** replied that they are working closely with the County Assessors, the county Department of Vehicles and the Transportation Department. A Committee is looking at the details to develop a plan so that all parts of the program will come together in a seamless fashion and will be up and running by 2013.

**Senator Malepeai** asked if a vehicle is registered and a pass is purchased, will the pass be only for that vehicle? **Director Merrill** affirmed that it would only be for that vehicle. There will be a corresponding number on a sticker that is similar to the registration sticker and applied to the license plate or the windshield. If a person has more than one vehicle, then a pass would have to be purchased for each vehicle.



**Chairman McKenzie** thanked Director Merrill for the presentation and information in preparation for this issue that will come before the Committee at a later date. The Chairman appreciated that the Department is looking at ways to take care of the parks with the loss of general funds.

**Chairman McKenzie** introduced a presentation from Janet Gallimore, Director, Idaho Historical Society regarding records retention and the efficiency of that function.

**PRESENTATION:** **Janet Gallimore**, Executive Director, Idaho State Historic Society (ISHS) and Bill Burns, Administrator of Purchasing, Department of Administration, are appearing before the Committee in conjunction with the Idaho Association of Counties (IAC) and the Association of Idaho Cities (AIC) to provide a detailed report that outlines the background and rationale for a 2012 proposal of a merger of the operations and functions of the State Records Center (SRC) and the Idaho State Archives (ISA) under the direction of the ISHS. The outcome of this action will enhance constituent access to and the preservation of essential records of fiscal, administrative, legal, vital, and long-term value. Idaho has had a history of records management since the territorial era and as early as 1883 when an appeal was made for shelving and cabinetry for storage. In 2009, advisory members from IAC, AIC and the State Historic Records Advisory Board joined the Idaho State Archives and Department of Administration for discussions on state records issues. Working together, the group realized that new solutions and thinking were needed to not only address current needs, but to plan for the future of records management in the state. The full presentation, script, and archival information is attached as part of the minutes. In closing, Director Gallimore invited the Committee for a tour of the facility. The Director offered to answer any questions the Committee might have or refer them to any one of the number of experts in the audience.

**Senator Davis** commented that there is a significant amount of "buy in" for this program. Would you highlight those? **Director Gallimore** responded that, over the past two years, the goal has been to have an inclusive approach to this project. Along with the ISHS and Administration staff, letters were sent to all 80 agencies proposing this program and asking for their feedback and concerns. The concerns were more about budget than the idea of merging. All those questions were addressed and responded to. **Senator Davis** asked if cities and counties are required by law, to maintain records and if so, for how long? **Director Gallimore** answered that each jurisdiction has its own retention schedules for general and permanent records. Permanent records are defined in statute. **Senator Davis** inquired about smaller entities with limited resources—how will they benefit from this program? **Director Gallimore** stated that they already provide a great benefit to entities, both small and large, who hold their records with them already. Having storage in a centralized location was very popular to the cities and counties. The clerks liked having central storage, secure access, and a trained archivist; services that are currently provided.

**Senator Lodge** asked if there is a guide available to properly take oral history and if so, what format is the best at this time? **Director Gallimore** confirmed that there is a guide for oral history. There are specific professional protocols. She could have a staff member send the format by e-mail. Currently they handle about 2700 oral histories ranging from elected officials to businesses to people of historic import in the state. **Senator Lodge** requested an e-mail of the format.

**Senator Stennett** inquired about the time frame and cost of putting this program together. **Director Gallimore** responded that they would like to have this completed in three years. The ISHS staff has already been working on a transitional plan to merge the two departments. Phase III would incorporate a request for the necessary funding.

**Chairman McKenzie** called for further questions. Being none, he thanked Director Gallimore for appearing before the Committee.

**ADJOURNMENT:** **Chairman McKenzie** concluded the business for the day. There will not be a meeting on Monday, January 23rd. Being no further business the meeting adjourned at 8:50 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

AGENDA  
**SENATE STATE AFFAIRS COMMITTEE**  
8:00 A.M.  
Room WW55  
Friday, January 27, 2012

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">RS21033</a>	RELATING TO APPOINTMENTS BY THE LEGISLATURE TO CERTAIN BOARDS AND COMMITTEES to repeal statutes involving inactive programs; ensure that no appointments are made for the purposes of the Idaho Commemorative Silver Medallions until such medallions are issued; and, make a name change to accurately reflect the Western States Transportation Agreement.	Jeff Youtz, Director, Legislative Services Office

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Vice Chairman Fulcher  
Sen Davis  
Sen Hill  
Sen McGee

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, January 27, 2012  
**TIME:** 8:00 A.M.  
**PLACE:** Room WW55  
**MEMBERS PRESENT:** Chairman McKenzie, Senators Davis, McGee, Winder, Lodge, Malepeai, and Stennett  
**ABSENT/ EXCUSED:** Vice Chairman Fulcher and Senator Hill

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present. **Jeff Youtz** will present **RS21033**.

**RS21033** RELATING TO APPOINTMENTS BY THE LEGISLATURE TO CERTAIN BOARDS AND COMMITTEES to repeal statutes involving inactive programs and to correct a name change.

**Jeff Youtz**, Director, Legislative Services Office, stated that this RS is before the Committee on behalf of the Legislative Council which is seeking to clean up Idaho Code as it relates to committees, advisory boards, and councils. There are currently forty-three (43) ongoing committees, commissions, and task forces. It is a pressing, logistical situation for the Pro Tem's office and the Speaker's office. These forty-three (43) entities amount to 220 individual, legislative appointments. Reviewing the status of, and updating Idaho Code relating to the statutes, will alleviate some of the activity.

Section 1 of the bill points out that the legislative intent determines there is no need to appoint a State Treasurer's Commemorative Medallion Committee until such time as the Treasurer issues a new silver medallion. The last issuance was in 2004.

Section 2 of the bill repeals the Pacific States Radioactive Materials Transportation Committee which has not met since 1987. The National Governor's Association now covers that task.

Section 3 of the bill deals with the State Trust for Outdoor Recreation Enhancement (STORE). This program which provides matching grants for school districts and local government city parks for recreation improvements was never funded. There was difficulty in finding a funding source. The grant review committee would be eliminated but it would not eliminate the STORE program itself.

Section 4 of the bill addresses the Idaho Hall of Fame Advisory Board that was established in 1997. That group has never met.

Section 5 of the bill is a name change to accurately reflect the current name of the Western States Transportation Agreement.

**Director Youtz** closed his comments and offered to answer any questions from the Committee.

**MOTION:**           **Senator Davis** moved, seconded by **Senator McGee**, to send **RS21033** to print.

**VOTE:**           The motion carried by voice vote.

**ADJOURNMENT:** **Chairman McKenzie** adjourned the meeting at 8:05 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

AGENDA  
SENATE STATE AFFAIRS COMMITTEE  
8:00 A.M.  
Room WW02  
Wednesday, February 01, 2012

SUBJECT	DESCRIPTION	PRESENTER
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**NOTE: CHANGE OF MEETING ROOM**

[H 404](#)

RELATING TO THE CAPITOL MALL AND  
OTHER STATE PROPERTY AND FACILITIES:  
providing legislative intent; amending **Chapter 16,**  
**Title 67, Idaho Code**, for the purpose of adding  
**Section 67-1613** to prohibit camping on capitol  
mall properties and other state facilities and  
defines "camping" in that context.

Senator Hammond

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie

Vice Chairman Fulcher

Sen Davis

Sen Hill

Sen McGee

Sen Winder

Sen Lodge

Sen Malepeai

Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, February 01, 2012  
**TIME:** 8:00 A.M.  
**PLACE:** WW02 - Auditorium  
**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, McGee, Lodge, Malepeai, and Stennett  
**ABSENT/ EXCUSED:** Senator Winder

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:01 a.m. with a quorum present. He announced that the only item on the agenda was H 404. The Chairman provided a road map of how the introduction and testimony would proceed to allow as many people to testify as possible in the time frame available.

**H 404** RELATING TO THE CAPITOL MALL AND OTHER STATE PROPERTY AND FACILITIES: providing legislative intent; amending **Chapter 16, Title 67, Idaho Code**, for the purpose of adding **Section 67-1613** to prohibit camping on capitol mall properties and other state facilities and defines "camping" in that context.

**Senator Hammond** initiated his explanation by comparing the difference between unregulated and regulated camping in Idaho's State Parks. Regulation ensures access by all citizens and further ensures preservation for all citizens, current and future, to enjoy the beauty of Idaho. He also pointed out what could happen if a small group of citizens decided to camp out in someone's front yard. Idaho's Capitol Mall is the property of all Idaho citizens and no one group of citizens has the right to seize that property and camp on it over an extended period of time.

**Senator Hammond** said that this bill ensures that State property is regulated and secured for the appropriate use of all Idaho citizens. This bill makes no provisions to limit or promote protests, vigils, or marches. But it does ensure that when accessing State property, all citizens will be accorded equal treatment through appropriate State regulation by closing a loop hole in our current law. This amendment states that "no person shall camp on or in any State-owned or leased property or facility including, but not limited to, the Capitol Mall, except those that are designated as a recreational camping ground, area, or facility". The bill also provides for an infraction penalty for violations and for the removal of personal property from State property.

The State of Idaho has, and will continue to, accommodate requests from groups holding meetings, rallies, protests, vigils, and marches. Those accommodations could include electricity, public address systems, podiums, and security. Seizure of public property for personal use or abuse by any group will not be allowed. **Senator Hammand** offered to answer any questions from the Committee.

**Chairman McKenzie** announced that Brian Kane and Mike Gilmore from the Attorney General's office was in attendance to answer questions.

**Senator Stennett** stated that, technically, the pregame assembly in the parking lot at BSU would not be allowed under this definition of State grounds. Is that correct? **Senator Hammond** stated that this would not apply because those activities are not considered camping. In addition, the State has some discretion on what they wish to allow. **Senator Stennett** asked for clarification on what would or wouldn't be allowed. **Senator Hammond** responded that the decision would be made by the Department of Administration and, in addition, the State facility would have some part in the decision.

**Senator Stennett** commented that Marine Major General Smedley Butler, a highly decorated and well respected leader, led the Bonus Army to Washington DC and camped across from the United States Capitol in order to get veterans' grievances addressed after WW I. If veterans were assembled in the park to complain about not receiving promised benefits and a lack of jobs for our returning armed forces, would this bill be before us today? Would you remove veterans from the park? **Senator Hammond** answered that he would.

**Senator Davis** stated that the BSU issue was dealt with in the language of the legislation which states that: "For the purposes of this section, the term "camp" or "camping" means to use as a temporary or permanent place of dwelling, lodging or living accommodation". The language clearly suggests that type of activity would not be affected.

**Senator Malepeai** asked for the meaning of "aesthetic standards" as defined in State statute. **Senator Hammond** defined "aesthetic standards" as those that are most pleasing to most people. In this instance, it would mean that rather than the assemblage of cardboard and other kinds of makeshift facilities, it would be the green grass, flowers, and the memorial that was intended to be there. **Senator Malepeai** said that "aesthetic standards" could be anything an individual wanted it to be. **Senator Hammond** submitted that it is a somewhat common standard about how one might want a front yard to look and the Capitol Mall is our front yard.

**Senator Hill** directed a question to **Michael Gilmore** in reference to the following language in the bill: "Such authorized persons seizing or disposing of such property shall be immune from legal liability for the seizing and disposing of such property." What does "be immune from legal liability" mean? Specifically, in the process of removing property, if unnecessary force against a human being is used, what kind of immunity is involved? **Mr. Gilmore** said this is legal liability for the seizing and disposing of property and does not include actions toward people. The intent of the language means, for example, if an officer is carrying out an order to remove property, that officer is not personally liable when due process of law has occurred. That is not immunity for the invasion of a person. The immunity here, deals strictly with the seizing and disposing of property. **Senator Hill** confirmed that the immunity was only for the value of the property. **Mr. Gilmore** agreed.

**Chairman McKenzie** opened the public testimony portion of the meeting.

The following people testified in opposition to **H 404**:

**Brian Walker**, attorney and resident of Boise, ID.

**Katie Fite**

**Gene Bray**, a retired Navy veteran and active participant in the Occupy Boise.  
**Dwight Scarborough**, District 21, US Navy veteran from the Viet Nam era.

**Alan Anderson** spoke as a concerned citizen.

**Russell Buschert**, businessman and resident of Eagle, ID.

**Dana Joblonski**, Marsing, ID.

**Alex Neiwirth**, resident of Boise, Idaho.



The following people testified in opposition of **H 404** and also submitted copies of their testimony (attached as part of these minutes):

**John C. McMahon**, Boise, ID, and veteran of the US Army Infantry.

**Bob Blurton**, Boise, ID.

**Anne Hausrath**, Boise, ID.

**Mary Reali**, Boise, ID, and District 21.

**Peter Reali**, Boise, ID, and District 21.

**Mike Despot**, Boise, ID, and was Manager of the Capitol Mall Buildings during the 1990s. **Senator Malepeai** asked if July 1st was **Mr. Despot's** own opinion or was he speaking on behalf of Occupy Boise. **Mr. Despot** said that each of the testimonies is that person's own opinion. No one person speaks for Occupy Boise. This is his own opinion and he can't speak for anyone else.

**Stan Hoobing**, Boise, ID, and a retired Lutheran pastor

**Rachael Raue**, Nampa, ID, and District 12. Referenced the Occupy Boise website at [www.occupyboise.org](http://www.occupyboise.org).

**Glen Garity**, member of the homeless community and currently residing in one of the tents at Occupy Boise.

**Mary Bolognino**, Boise, ID.

**Barbara Kemp**, resident of Idaho for 33 years.

**Patrick Casey**, Doctor of Physical Medicine, Physician, and small business owner.

**Cyndi Tiferet**, Boise, ID.

**Dean Gunderson**, Boise, ID, representing self.

**Pam Piper-Ruth**, Boise, ID.

**Kristy Kuecken**, resident of Boise, ID.

**Steve Walker**, resident in District 17.

**Monica Hopkins**, Executive Director, ACLU of Idaho.

**Jan Sylvester**, resident of Meridian ID.

**Fairy Hitchcck**, Hitchcock Family Advocator, Boise, ID, spoke in favor of **H 404**.

**Greg and Charlotte Olson**, Boise, ID, submitted written testimony but remained neutral.

**Chairman McKenzie** announced that the Committee had to adjourn by 10:30 a.m. so Committee Members could go to other meetings they could not change. If there is written testimony, please provide that to one of the Pages and it will be made part of the record. There will be closing remarks and then the Committee Members will have an opportunity to ask questions of **Mr. Gilmore** from the Attorney General's Office or from the Department of Administration.

The following people submitted only written testimony in opposition to **H 404**:

**Harold Stiles**, former Caldwell resident and now Boise, ID resident.

**Geoff Burns**, Boise, ID.

**Edward Waters**, Boise, ID.

**Christine Rutledge**, Boise, ID.

**Barbara Pinkerton**, Boise, ID.

**Joseph A Voss, Jr**

**Marley Diaz**, Boise, ID.

**Gerald King**, Idaho native and WWII Veteran, Boise, ID.

**Senator Hammond** closed by thanking the audience for their respectful and proper testimony. In reference to Senator Davis' concerns that camping is not a part of our free speech, this bill does not silence anyone's voice. The voices of our citizens were heard today and they are heard regularly on the capitol steps throughout the year. Our citizen's voices will continue to be heard, not only in this auditorium, but in hearing rooms throughout this building as well as on the floor of the chamber through their representatives.

The seizure of the people's property is not the right of any citizen or group of citizens. The cause of Occupy Boise is not the issue here. Good folks are expressing their legitimate concerns and grievances which is appropriate but the front yard of the Capitol Mall cannot be seized for their own purposes. No one should be able to seize public property for their own purpose. H 404 seeks to close the loophole that allows such a congregation.

Regarding the question about the personal property that is being used at that site, it is not the intent to seize personal property. The intention is to clean up what is left after the people who are using that site have removed their personal property.

**MOTION:**

**Senator Davis** moved, seconded by **Senator McGee**, to send **H 404** to the amending order.

**Senator Davis** commented that speech is protected by the Idaho Constitution and the 1st Amendment. The Senator was troubled when he first saw the Occupy Boise encampment. However, hard times suggest such activity. We may disagree with the solutions but that is part of the public dialogue. This type of speech is subject to regulation, but what are the standards to regulate that type of speech? The seizure component is an uncomfortable part of this bill, although the intent is to discard what is left. There is the possibility of a language change that would provide a way to have a respectful and satisfying way to meet the 14th Amendment standards that **Brian Walker** spoke about, particularly preserving property rights. For these reasons, we should look at some modifications as it relates to this issue.

**Senator Malepeai** agreed that we are here to ensure due process and to exercise the right to free speech. He is for this motion and looks forward to the dialogue to find a solution.

**Senator Stennett** stated that this is a philosophical disagreement when entertaining this bill. It is the Senator's personal opinion that we quiet what we don't want to hear in any form. She cannot support the motion.

**Senator Hill** supports the motion. His original intent was to support this bill. His homework had been done by studying the court cases and reconciling the 1st Amendment rights, but there is a concern about the 4th and 5th Amendment rights. Senator Hammond has made excellent comments, but there is the issue of personal property. There is language that can be added to make the intent more clear, including, potentially, with respect to the emergency clause.

**Vice Chairman Fulcher** directed his comments to the people who took the time to testify. He respects and thanks those people for a willingness to share, and it is their right to do so. There may be disagreement on how to voice opinions, but it is not feasible for everyone to make their point in this way. We stand in unison to give everyone a voice and to work together to figure things out. He supports the motion.

**Senator Lodge** thanked everyone who came forward to testify and those who wanted to testify and didn't have enough time. Your presence is appreciated. We are not happy with what is happening in this great nation of ours and are concerned with the future. Thanks for the information that is being distributed. We have heard your concerns and we would like to be aware of what other citizens are saying when they come and see the tent city.

**Chairman McKenzie** asked for further comments. Being none, he called for a vote on the motion to send **H 404** to the 14th order for possible amendment.

**VOTE:** The motion carried by Voice Vote.

**ADJOURNMENT:** **Chairman McKenzie** extended the Committee's appreciation to everyone who attended this meeting and acted in such a passionate and respectful manner in providing testimony and also, to those who wanted to testify but couldn't due to lack of time. Being no further business, the meeting adjourned ay 10:25 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

AGENDA  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Room WW55**  
**Friday, February 03, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>S 1270</u></a>	RELATING TO APPOINTMENTS BY THE LEGISLATURE TO CERTAIN BOARDS AND COMMITTEES to repeal statutes involving inactive programs; ensure that no appointments are made for the purposes of the Idaho Commemorative Silver Medallions until such medallions are issued; and, make a name change to accurately reflect the Western States Transportation Agreement.	Jeff Youtz, Director Legislative Services Office
<a href="#"><u>RS20775</u></a>	RELATING TO THE STATE LOTTERY COMMISSION TO AMEND <b>Section 67-7434, Idaho Code</b> to modify the current dividend model from an annual prescribed distribution to an optional or more frequent transfer throughout the year.	Jeff Anderson, Director, Idaho State Lottery
<a href="#"><u>RS20786</u></a>	RELATING TO CHARITABLE BINGO AND RAFFLES TO AMEND <b>Sections 67-7709 and 67-7710, Idaho Code</b> , to allow an increase in expenditure percentages due to the increase in business costs for bingo and raffle licensees.	Jeff Anderson, Director, Idaho State Lottery
Minutes:	January 16th	Senators Winder and Stennett
	January 18th	Senators Lodge and Stennett
	January 20th	Senators Hill and McGee
	January 27th	Senators Davis and Lodge

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie	Sen. Hill	Sen Lodge
Vice Chairman Fulcher	Sen Winder	Sen Malepeai
Sen Davis	Sen McGee	Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, February 03, 2012  
**TIME:** 8:00 A.M.  
**PLACE:** Room WW55  
**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Hill, McGee, Winder, Lodge, Malepeai, and Stennett  
**ABSENT/ EXCUSED:** Senator Davis

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**S 1270** RELATING TO APPOINTMENTS BY THE LEGISLATURE TO CERTAIN BOARDS AND COMMITTEES to repeal statutes involving inactive programs; ensure that no appointments are made for the purposes of the Idaho Commemorative Silver Medallions until such medallions are issued; and, make a name change to accurately reflect the Western States Transportation Agreement.

**Jeff Youtz**, Director, Legislative Services Office, introduced **S 1270** on behalf of the Legislative Council which is seeking to clean up Idaho Code as it relates to committees, advisory boards, and councils. There are currently forty-three ongoing committees, commissions, and task forces. It is a pressing, logistical challenge for the Pro Tem's office and the Speaker's office. These forty-three entities amount to 220 individual, legislative appointments. Last summer the Legislative Council reviewed the status of Idaho Code relating to the statutes.

Section 1 of the bill points out that the legislative intent determined there was no need to appoint a State Treasurer's Commemorative Medallion Committee until such time as the Treasurer issues a new silver medallion. The last issuance was in 2004.

Section 2 of the bill repeals Section 39-3029, Idaho Code, which established the Pacific States Radioactive Materials Transportation Committee. They have not met since 1987 because The National Governor's Association now takes care of those functions.

Section 3 of the bill deals with the State Trust for Outdoor Recreation Enhancement (STORE). This does not repeal the STORE program, but it does repeal the reference to the grants committee that awards matching grants for local communities. The program was never funded so there is no reason for the committee. At such time as the program is funded, the advisory group can be reinstated.

Section 4 of the bill repeals a section of the code dealing with The Idaho Hall of Fame Building Advisory Board that was established in 1997. That group has never met.

**Mr. Youtz** closed by stating that this bill decommissions some of these advisory groups and committees that haven't met in several years and cleans up the code.

**Senator Hill** thanked **Mr. Youtz** for acting for the Legislative Council and following up with this legislation. There may be some additional changes in the future but these were most obvious.

**MOTION:** **Senator Hill** moved, seconded by **Vice Chairman Fulcher**, to send **S 1270** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Senator Hill** will be the sponsor of **S 1270** on the Senate floor.

**RS20775** RELATING TO THE STATE LOTTERY COMMISSION TO AMEND Section 67-7434, Idaho Code, to modify the current dividend model from an annual prescribed distribution to an optional or more frequent transfer throughout the year.

**Jeff Anderson**, Director, Idaho State Lottery, brought **RS20775** to the Committee. **RS20775** provides the Lottery Commission the flexibility to change the frequency of the distribution of dividends to stakeholders (Idaho Public Schools, Permanent Building Fund, and, until 2014, the Bond Levy Equalization Fund).

When the lottery was established in 1989, it was required that dividends be distributed annually. A study of the best practices in the industry determined that many lotteries distribute the earnings on a more frequent basis. This was not an issue when those deposits were earning a good interest rate. With lower interest rates, it would be feasible to distribute those earnings more often. Transfers would occur no less frequently than quarterly and the Lottery Commission would have the option of modifying that frequency to maximize the benefits to the State. **Mr. Anderson** provided a chart "Lottery Dividend Transfer Change" as an example of how this change would work and explained the process. (On file as part of minutes.)

**Chairman McKenzie** called for questions. Being none, the Chairman called for a motion.

**MOTION:** **Senator Winder** moved, seconded by **Senator McGee**, to send **RS20775** to print.

**VOTE:** The motion carried by voice vote.

**RS20786** RELATING TO CHARITABLE BINGO AND RAFFLES TO AMEND **Sections 67-7709 and 67-7710, Idaho Code**, to allow an increase in expenditure percentages due to the increase in business costs for bingo and raffle licensees.

**Mr. Anderson** explained that **RS20786** has to do with charitable gaming. There are two changes being made: 1) How the Lottery Commission looks at Bingo expenses. The current legislation determines that the maximum amount an operator can spend on administrative expenses is fifteen percent with a minimum amount of twenty percent that must go to charity. The operators have been under pressure to meet the current administrative limit. Their recommendation is to raise the limit to eighteen percent which would come out of prize funds. Charity would remain at the current percentage rate.

2) Expenses for printing and advertising have also increased for raffle game operators. This legislation changes the ninety percent minimum to charity to eighty percent.

**Senator McGee** asked if these changes had been made due to the discussions during the 2011 session. **Mr. Anderson** responded that those changes were much more extensive. Since that time the Office of Performance Evaluations has done an audit of the Idaho Lottery and Charitable Gaming Operations and the report is scheduled to be released on February 13th. It was determined to be prudent to wait for that report before suggesting any other changes to the legislation.

**MOTION:** **Senator McGee** moved, seconded by **Senator Lodge**, to send **RS20786** to print.

**VOTE:** The motion carried by voice vote.

**MINUTES:** January 16th and January 18th  
**Senator Stennett** moved, seconded by **Senator Winder**, to approve the January 16th and January 18th minutes as written.

**VOTE:** The motion carried by voice vote

January 20th

**Senator Hill** moved, seconded by **Senator McGee**, to approve the January 20th minutes as written.

**VOTE:** The motion carried by voice vote.

**ADJOURNMENT:** **Chairman McKenzie** announced that there would be a meeting on Monday, the Idaho National Laboratory will give a presentation on Wednesday, and the "Add the Words" to the Human Rights Act will be heard on Friday. Being no further business the meeting was adjourned at 8:16 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

AGENDA  
**SENATE STATE AFFAIRS COMMITTEE**  
8:00 A.M.  
Room WW55  
Monday, February 06, 2012

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">RS21095</a>	A CONCURRENT RESOLUTION to authorize the Legislative Council to appoint a Committee to undertake and complete a study of the feasibility and means necessary for the State of Idaho to obtain primacy over regulation of wastewater discharges to surface water.	Senator Hammond

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Vice Chairman Fulcher  
Sen Davis  
Sen Hill  
Sen McGee

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, February 06, 2012  
**TIME:** 8:00 A.M.  
**PLACE:** Room WW55  
**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, McGee, Winder, Lodge, Malepeai, and Stennett  
**ABSENT/ EXCUSED:**  
**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.  
**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present and announced that earlier this morning, the sponsor for **RS21095** made a request to defer the RS in order to make some changes. **RS21095** will be deferred to Wednesday, February 8th, along with the approval of the January 27th minutes.  
**ADJOURNMENT:** **Chairman McKenzie** adjourned the meeting at 8:01:45.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

**AMENDED AGENDA #2**  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Room WW55**  
**Wednesday, February 08, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS21095C1</u></a>	A CONCURRENT RESOLUTION to authorize the Legislative Council to appoint a Committee to undertake and complete a study of the feasibility and means necessary for the State of Idaho to obtain primacy over regulation of wastewater discharges to surface water.	Senator Hammond
<a href="#"><u>RS21129</u></a>	RELATING TO CODIFIER'S CORRECTIONS IN STATUTES to make various codifier corrections to the Idaho Code.	Mike Nugent, Legislative Services Office
PRESENTATION:	Idaho National Laboratory	John Grossenbacher, Director, INL
MINUTES:	January 27th	Senators Davis and Lodge

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie	Sen Winder
Vice Chairman Fulcher	Sen Lodge
Sen Davis	Sen Malepeai
Sen Hill	Sen Stennett
Sen McGee	

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, February 08, 2012  
**TIME:** 8:00 A.M.  
**PLACE:** Room WW55  
**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, McGee, Winder, Lodge, Malepeai, and Stennett  
**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** convened the meeting at 8:00 a.m. with a quorum present.

**RS21095C1** A CONCURRENT RESOLUTION to authorize the Legislative Council to appoint a Committee to undertake and complete a study of the feasibility and means necessary for the State of Idaho to obtain primacy over regulation of wastewater discharges to surface water.

**Senator Hammond** explained that this issue of primacy has been studied before. The State is quite capable of managing this issue. The overreach from the Environmental Protection Agency (EPA) has grown larger and is affecting development within the State. For that reason, this legislation is being brought forward.

In Kootenai County there are three cities that discharge into the Spokane River. They are being asked to meet standards that science does not support. The projections for additional costs to those three wastewater plants amount to \$100.0 million. The standard for Idaho is set by the state of Washington although Washington does not have to meet that same standard. This bill will not cure the problem but it will give Idaho a voice at the table. If this standard is set, it will stop growth and development. This has become a statewide issue and the State cannot afford to delay any longer.

**Senator Stennett** asked how much "deregulation" do these entities need to continue to function. **Senator Hammond** answered that it will not deregulate the process, it will change who will regulate the process; instead of EPA, it would be the Department of Environmental Quality (DEQ). The standards would remain the same. DEQ also issues permits for many of those same processes but the struggle now is with an agency that has a regional and national viewpoint instead of those permits coming to Idaho. If those permits came to the State, it would improve the ability to manage the process.

**Senator Stennett** asked if the DEQ would have the oversight for industry as well as municipalities and agencies. **Senator Hammond** responded that DEQ would be the overseer for any permit holder.

**MOTION:** **Vice Chairman Fulcher** moved, seconded by **Senator Winder**, to send **RS21095C1** to print.

**Senator Davis** noted that this is a concurrent resolution so it would go straight to the 10th Order of Business. Is it contemplated that this SCR would come back for further review? **Senator Hammond** asked that the bill be returned to State Affairs for further discussion and clarification before it goes to the floor.

**Senator Davis** asked the maker of the motion if they would find Senator Hammond's suggestion to be problematic or whether they desire for it to go straight to the Tenth Order. **Vice Chairman Fulcher** clarified his earlier motion by sending **RS21095C1** to print and to add that it be returned to the State Affairs Committee for further discussion.

**VOTE:** The motion carried by voice vote.

**RS21129** RELATING TO CODIFIER'S CORRECTIONS IN STATUTES to make various codifier corrections to the Idaho Code.

**MOTION:** **Senator Davis** moved, seconded by **Vice Chairman Fulcher**, to send **RS21129** to print.

**VOTE:** The motion carried by voice vote.

**Chairman McKenzie** welcomed Director Grossenbacher from the Idaho National Laboratory (INL).

**PRESENTATION:** **John Grossenbacher**, Director, INL, stated that there were two presentations before the Committee: 1) Economic Outlook and Revenue Assessment Committee provides background and current status of the INL. This is useful to review at a convenient time but won't be covered in depth today. 2) Idaho's Leadership Role in Nuclear Energy will be the topic for today.

**Director Grossenbacher** provided the following overview of what will be covered in today's presentation.

- Background
- Burdens and Benefits of Nuclear Technology for Energy and Defense
- The Idaho Settlement Agreement
- Yucca Mountain History
- Blue Ribbon Commission Charter and Schedule
- The Opportunity for Idaho

The Federal Government is in compliance with the clean up settlement agreement with the State of Idaho. In some instances, the clean up is being accelerated. Waste is leaving the state and the aquifer is being protected. **Senator Davis** stated that the Committee had just printed a RS on primacy. In the instance of the aquifer being protected, if Idaho were to work toward primacy, would that have an adverse impact on the efforts of the INL or, because it is a national lab, could there be primacy for what the lab is doing? **Director Grossenbacher** said he wasn't a lawyer nor an expert on primacy. However, relationships between federal installations like the INL, the Federal Government, and the host state that deals with those capabilities has evolved over time. When the INL and it's predecessors was created, there was no EPA. Now there is much more transparency and a basis for partnership with those entities. The Federal Government cannot have an installation and do whatever they want without concern for the state. INL has the responsibility to tell the community everything because it depends on the support, trust, and confidence of the citizens. This is not an expert opinion but, as a practical matter, there must be a partnership between Federal Government and the state with full transparency and the need for cooperation and collaboration.

In addition to an overview of the INL, **Director Grossenbacher** touched on the Blue Ribbon Commission Recommendations on Used Fuel and High-Level Waste (BRC) and what the current status is. The Final Report was issued January 2012. They will wait and see what national leadership does with the report and, in particular,

Congress, because the current law has to be changed. Current law says there is only one plan and that is Yucca Mountain. Until that is changed, nothing can be done.

The Quadrennial Energy Review (QER), an ongoing activity, is an effort put together by the President that models the defense department quadrennial renewal process. They look at military strategy and determine if it is right and is it what the country needs. The intent is to get to the same place with energy. DOE developed a technology review program but it lacks details. That is very significant because it could have an impact on energy. Everything nuclear is big and long term, and should be looked at on a long term basis.

**Director Grossenbacher** thanked Governor Otter for his creation of the Leadership in Nuclear Energy (LINE) Commission. The Commission formed in January, 2012, with a final report date of January 2013. The Charter is summarized within the presentation along with an overview of the points that are made in the Executive Order.

**Director Grossenbacher**, in closing, requested that leadership review the history of the site and its relationships, evaluate the past, and look at the potential in the future.

Both presentations are included in their entirety as attachments to these minutes.

**Senator Winder** asked how the funding looked for the current and long term.

**Director Grossenbacher** answered that in 2012, the INL will be fine although there may be some minor adjustments primarily based on skill sets. The year 2013 and beyond is a huge question mark because of the uncertainty of the federal budget and the failure of the super committee. If the worst happens, they will plan on eight percent and that will depend on the course of this year. The federal budget deficit is an enormous challenge and there isn't a clear path forward.

**Chairman McKenzie** thanked **Director Grossenbacher** and asked for a motion on the January 27th minutes.

**MINUTES:** January 27th

**MOTION:** **Senator Davis** moved, seconded by **Senator Lodge**, to approve the minutes of January 27th as written.

**VOTE:** The motion carried by voice vote.

**ADJOURNMENT:** **Chairman McKenzie** announced that there is a full agenda on Friday. Being no further business, the meeting adjourned at 8:37 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

AGENDA  
**SENATE STATE AFFAIRS COMMITTEE**  
8:00 A.M.  
Room WW55  
Friday, February 10, 2012

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">RS20913C1</a>	RELATING TO HIGHWAYS AND BRIDGES to modify a specified list of eligible highway projects on which the Idaho Transportation Board is authorized to use federal aid highway funds to pay debt service costs incurred from bonds issued by the State.	Representative Hagedorn, Senators Winder and McGee
<a href="#">RS21214</a>	RELATING TO ADMINISTRATIVE RULES to strengthen the legislature's statement of support for negotiated rulemaking by clarifying its purposes and providing minimum procedures to enhance public notice and participation.	Roger Batt
<a href="#">RS20877</a>	RELATING TO THE HUMAN RIGHTS COMMISSION by adding four words to the Idaho's Civil Rights Act and to the State's Human Rights Act to provide against discrimination because of sexual orientation.	Senator Malepeai

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Vice Chairman Fulcher  
Sen Davis  
Sen Hill  
Sen McGee

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, February 10, 2012  
**TIME:** 8:00 P.M.  
**PLACE:** Room WW55 – Moved to WW02  
**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, McGee, Winder, Lodge, Malepeai, and Stennett  
**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** announced there would be a fifteen minute delay to allow the meeting to be moved to the auditorium to accommodate the large audience that has assembled.

**Chairman McKenzie** called the meeting to order at 8:15 a.m. with a quorum present. He explained that the three items on the agenda were print hearings and that there would not be public testimony. He noted that the sign-up sheet showing every person who signs in will be part of the permanent record.

**RS20913C1** RELATING TO HIGHWAYS AND BRIDGES to modify a specified list of eligible highway projects on which the Idaho Transportation Board is authorized to use federal aid highway funds to pay debt service costs incurred from bonds issued by the State.

**Representative Hagedorn** introduced **RS20913C1** that modifies the GARVEE program and updates the statute to add the ability to use currently authorized bonds for bridges. There has been substantial savings in the GARVEE program due to the current economy. As existing projects are completed, there will be funds that were not used and those savings can now be used on bridges. This bill does not add to the current bonding authority but it allows the transfer of those funds to be used for certain designated bridge projects throughout the state.

**MOTION:** **Vice Chairman Fulcher** moved, seconded by **Senator Lodge** to send **RS20913C1** to print.

**VOTE:** The motion carried by voice vote,

**RS21214** RELATING TO ADMINISTRATIVE RULES to strengthen the legislature's statement of support for negotiated rulemaking by clarifying its purposes and providing minimum procedures to enhance public notice and participation.

**Roger Batt**, representing Idaho Heartland Coalition, presented **RS21214** to the Committee. **Mr. Batt** stated that this legislation strengthens the negotiator rulemaking process and establishes minimum procedures for agencies to follow if an agency engages in Negotiated Rulemaking. The procedures in this legislation provide more transparency, better public notice, participation throughout the rulemaking process, and allows for more consistency within the process between agencies and industry.

This legislation also allows for a written record to summarize the unresolved issues, key information, and conclusions as a result of the rulemaking process. Eight state agencies and the Governor's Office have been consulted during the development of this legislation. The agencies include the Idaho Bureau of Occupational Licensing,

Department of Health & Welfare, Transportation Department, Water Resources, Department of Agriculture, Department of Administration, DEQ, and Alcohol Beverage & Control.

**Mr. Batt** asked for the support of this bill.

**Senator Davis** asked if **Mr. Batt** had heard from the Department of Health & Welfare regarding their concerns. **Mr. Batt** reported that they had not heard a final conclusion from Health & Welfare. The other entities did not have any concerns.

**Senator Lodge** said that Health & Welfare has some concerns and she will talk to **Mr. Batt** about those concerns although she will vote to print this RS.

**MOTION:** **Senator McGee** moved, seconded by **Vice Chairman Fulcher**, to send **RS21214** to print.

**VOTE:** The motion carried by voice vote.

**RS20877** RELATING TO THE HUMAN RIGHTS COMMISSION by adding four words to the Idaho's Civil Rights Act and to the State's Human Rights Act to provide against discrimination because of sexual orientation.

**Senator Malepeai** brought **RS20877** before the committee stating that this legislation is very simple, it just adds the term "sexual orientation, gender identity" so the Commission can investigate, mediate, and make findings in cases of discrimination on that basis. The federal Human Rights Act created the Idaho Human Rights Commission to protect employees and employers from discrimination on the basis of race, sex, national origin, and religion. The act allows the Commission to address issues in employment, housing, education, and public accommodations. This legislation does not create a new protected class since all people have a sexual orientation and gender identity. This legislation ensures that Idahoans are free to hold jobs and rent apartments regardless of whether they are straight or gay.

**Senator Malepeai** stated that the question before the Committee today is whether or not it is the policy of the State of Idaho to allow discrimination against gay family members, coworkers, and friends. The Senate State Affairs Committee has never before considered this very simple legislation of just "adding the words." **Senator Malepeai** went on to emphasize the importance of this legislation to the families affected by the omission of adding these words.

**Chairman McKenzie** asked for questions from the Committee.

**Senator Winder** stated his appreciation for **Senator Malepeai's** passion and sensitivity for this issue.

**MOTION:** **Senator Stennett** moved, seconded by **Senator Malepeai**, to send **RS20877** to print.

**VOTE:** The motion failed by voice vote.

**ADJOURNMENT:** Being no further business, **Chairman McKenzie** adjourned the meeting at 8:29 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary



AGENDA  
**SENATE STATE AFFAIRS COMMITTEE**  
8:00 A.M.  
Room WW55  
Monday, February 13, 2012

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">RS21196</a>	RELATING TO BEER to provide the same exception for Idaho breweries that is available to Idaho wineries that allows for a financial interest in or aid to retailers.	Senator Keough,
<a href="#">RS21190C1</a>	RELATING TO BOARD OF TRUSTEES OF LIBRARY DISTRICTS to provide concise procedures in the event of a recall for library district trustees.	Senator Keough
GUBERNATORIAL APPOINTMENT(S):	Ruthie Johnson, Hayden Lake, ID, to the Idaho Commission on Human Rights  Hyong K. Pak, Twin Falls, ID, to the Idaho Commission on Human Rights	
MINUTES:	February 6th	Senator Lodge

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Vice Chairman Fulcher  
Sen Davis  
Sen Hill  
Sen McGee

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, February 13, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, McGee, Winder, Lodge, Malepeai, and Stennett

**ABSENT/EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present and asked **Senator Shawn Keough** to present **RS21196**.

**RS21196** **RS21196** was presented by **Senator Shawn Keough**. **Senator Keough** explained that this legislation would provide the same exception for Idaho breweries that is available to Idaho wineries allowing for financial interest in, or aid to retailers. **Senator Keough** indicated that Idaho Code currently prevents owners of breweries from having a financial interest in another facility, especially if that facility included a retail tasting room. This legislation would remedy that inconsistency and mirror what exists in Idaho Code for wineries. **Senator Keough** discussed possible amendments or changes being considered but asked for **RS21196** to be printed so that all parties of interest could contribute.

**MOTION:** **Senator Davis** moved, seconded by **Vice Chairman Fulcher** to send **RS21196** to print.

**VOTE:** The motion carried by voice vote.

**RS21190C1** **RS21190C1** provides for concise procedures in the event of a recall for library district trustees. **Senator Keough** explained that ambiguous wording appears in Idaho Code, specifically the words "as closely as possible as procedures described in the recall of county commissioners". She explained that smaller districts are required to obtain an unfair number of signatures to initiate a recall and that this legislation would remedy those inconsistencies. **Senator Davis** questioned whether a library district could involve more than one county. **Senator Keough** replied in the affirmative. **Senator Davis** questioned if, by lowering the number of required signatures, recall elections would be commonplace. **Senator Keough** stated her desire was not to cause a proliferation of recall elections, but to make the procedure fair. **Senator Lodge** indicated she resides in a library district that encompasses two counties.

**MOTION:** **Senator McGee** moved, seconded by **Senator Stennett**, to send **RS21190C1** to print.

**VOTE:** The motion carried by voice vote.

**GUBERNATORIAL APPOINTMENT(S):** Ruthie Johnson, Hayden Lake, ID, and Hyong K. Pak, Twin Falls, ID, to the Idaho Commission on Human Rights

**Ruthie Johnson** was introduced to the committee by **Chairman McKenzie**. **Ms. Johnson** updated the committee on her ten year service on the Idaho Commission on Human Rights. **Ms. Johnson** recounted her enjoyment in helping people with problems and her past experience working for **Senator McClure**. She expressed her familiarity with a wide range of problems.

**Ms. Johnson** commended the Commission for their attention to detail when performing their duties.

**Senator Hill** asked for a summary concerning the Idaho Commission on Human Rights, the number of commissioners, the processes used, and approximate cases reviewed. **Ms. Johnson** replied that about thirty cases per month are heard. She explained that on a few occasions, cases will be reviewed by a smaller group of commissioners and that most cases are reviewed via conference calls. **Senator Hill** asked if the cases and review are a matter of public record. **Ms. Johnson** indicated that some of the details are reviewed in private sessions.

**Senator Winder** pointed out that the Commission is bipartisan and questioned **Ms. Johnson** as to her opinion about the direction the State of Idaho should take in reference to the cases brought before the Human Rights Commission. She mentioned the ineffectiveness of quota systems used to assure broad based populations.

**Chairman McKenzie** thanked **Ms. Johnson**, expressing appreciation for her appearance before the Committee as well as her work on the Commission.

**Hyong K. Pak** was introduced to the committee by **Chairman McKenzie**. **Mr. Pak** has served for many years on the Commission and he explained that he was born and raised in South Korea, moving to Idaho in 1972. He immigrated to America when he was in 3rd grade, and continued his education in Boise schools, the College of Idaho and the University of Idaho. He has lived for twenty-two years in Jerome County. **Mr. Pak** praised the efforts of the Commission in averting many lawsuits through mediation.

**Senator Davis** questioned **Mr. Pak** concerning methods used by the Commission staff preparatory to the commissioners hearing cases and whether any such investigations could be considered intimidating or harassing. **Mr. Pak** indicated the Commission reviews cases by the facts presented, which he believes have been properly investigated by the civil rights department. He cited budget restraints as a cause in forcing staff to be overworked and underpaid. **Mr. Pak** explained that the printed investigation is reviewed and then the commissioners determine whether or not the case is viable and could be pursued via a lawsuit. **Senator Davis** commended the professionalism of the investigators and asked further information concerning the screening process. **Mr. Pak** explained that the process begins with a phone call and the assignment to an investigator who ascertains whether the concern falls within the statutory constraints of the Commission.

**Vice Chairman Fulcher** asked **Mr. Pak** to enumerate the trend in case load (increasing/decreasing) over the time he has served on the Commission. **Mr. Pak** explained that current case load is consistent with past years. He reported that most cases are determined to be invalid.

**Chairman McKenzie** thanked **Mr. Pak**, and expressed his appreciation for appearing before the Committee, as well as his work on the Commission.

**MINUTES:**

**Senator Lodge** moved, seconded by **Vice Chairman Fulcher**, to approve the February 6th minutes.

**VOTE:**

The motion carried by voice vote.

**ADJOURNMENT:** Being no further business, **Chairman McKenzie** adjourned the meeting at 8:29 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

**AMENDED #3 AGENDA  
SENATE STATE AFFAIRS COMMITTEE  
8:00 A.M.  
Room WW55  
Wednesday, February 15, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS21306</u></a>	PROPOSING AN AMENDMENT TO ARTICLE I, OF THE CONSTITUTION OF THE STATE OF IDAHO to provide that the rights to hunt, fish, and trap are preserved for the people of Idaho.	Senator Heider
GUBERNATORIAL APPOINTMENTS:	Vote on the appointments of Ruthie Johnson and Hyong K. Pak to the Idaho Commission on Human Rights.  Wendy Lively, Ammon, ID, to the Bingo-Raffle Advisory Board J. Marshall Garrett, Boise, ID, to the Bingo-Raffle Advisory Brd.	
<a href="#"><u>HJM 7</u></a>	A JOINT MEMORIAL to recognize and honor an Idaho native, Sergeant Chris Tschida, for his injuries suffered during battle, his act of courageous valor in saving the lives of his crew, and keeping his tank and munitions out of enemy hands.	Rep Hagedorn
<a href="#"><u>S 1298</u></a>	RELATING TO CODIFIER'S CORRECTIONS IN STATUTES to make various codifier corrections to the Idaho Code.	Mike Nugent, LSO
<a href="#"><u>H 391</u></a>	RELATING TO THE PRIMARY ELECTION removing the references to "presidential primary" or "presidential preference primary" on the primary election ballot since delegates to the national conventions are now being selected at party caucuses.	Tim Hurst, Chief Deputy, Secretary of State
<a href="#"><u>RS21244</u></a>	RELATING TO AIR NAVIGATION FACILITIES to eliminate language found in <u>Chapter 401, Title 21, Idaho Code</u> made obsolete by <b>HJR 5</b> .	Senator Toryanski
MINUTES:	Minutes for February 3rd	Senators Hill and McGee

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie	Sen Winder
Vice Chairman Fulcher	Sen Lodge
Sen Davis	Sen Malepeai
Sen Hill	Sen Stennett
Sen McGee	

COMMITTEE SECRETARY

Twyla Melton  
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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, February 15, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, McGee, Winder, Lodge, Malepeai, and Stennett

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present.

**RS21306** PROPOSING AN AMENDMENT TO ARTICLE I, OF THE CONSTITUTION OF THE STATE OF IDAHO to provide that the rights to hunt, fish, and trap are preserved for the people of Idaho.

**Senator Heider** introduced **RS21306** to the Committee with a request to print. This legislation adds two words to a new Section 23, Article I, of the Constitution of the State of Idaho. Section 23 states that "the rights to hunt, fish, and trap are a valued part of the heritage of the State of Idaho and shall forever be preserved for the people and managed through the laws, rules, and proclamations of the state and to provide that the rights set forth do not create a right to trespass on private property, shall not affect rights to divert, appropriate, and use water, and shall not lead to a diminution of other private rights."

**Senator Davis** explained that *SJR104* is on the 13th Order of Business. Conversations with **Senator Heider**, as well as the Attorney General's Office, resulted in their recommendation to include those words "and managed"; otherwise, there is some uncertainty as to what it would mean. Because it is past the 35th day, the rule required a letter from leadership which is being done "as we speak".

**MOTION:** **Senator Davis** moved, seconded by **Vice Chairman Fulcher**, to send **RS21306** to print.

**VOTE:** The motion carried by voice vote.

**RS21244** RELATING TO AIR NAVIGATION FACILITIES to eliminate language found in Chapter 401, Title 21, Idaho Code, made obsolete by *HJR 5*.

**Senator Toryanski** explained that **RS21244** deletes outdated language regarding airports from Idaho Code. During the 2010 legislative session, *HJR 5* was one of three bonding related, constitutional amendments that passed the legislature and was subsequently approved by the voters. *HJR 5* added a new section to the Constitution that allows public airports to issue revenue and special facility bonds provided that these bonds were repaid only through airport generated fees and not tax dollars. This language cleans up the inconsistencies resulting from the recently amended Constitution.

**MOTION:** **Senator Davis** moved, seconded by **Vice Chairman Fulcher**, to send **RS21244** to print.

**VOTE:** The motion carried by voice vote.

## HJM 7

A JOINT MEMORIAL to recognize and honor an Idaho native, Sergeant Chris Tschida, for his injuries suffered during battle, his act of courageous valor in saving the lives of his crew, and keeping his tank and munitions out of enemy hands.

**Representative Hagedorn** stated that **HJM 7** allows a very unique opportunity to recognize a very extraordinary individual from Meridian. **Representative Hagedorn** has been involved with a foundation that brings severely wounded soldiers into Idaho to send them through the BSU and CWI Special Lecture Training Series aid in their transfer from the battle field to business. In response to the foundation's request, the Chairman of the Joint Chiefs of Staff came to Idaho and ultimately, was introduced to **Sgt. Tschida**. A short biography of his experience lead to the documents (attached) that are before the Committee along with **HJM 7**. In addition to the Purple Heart he received, we believe it is proper and right to give him the appropriate awards for his heroism. Letters from the Governor and the U. S. Delegation will be attached to **HJM 7** and will be sent to the President of the United States who will then, very likely, hand it over to the Department of Defense where it will be investigated to confirm truth and accuracy. This memorial asks that **Sgt. Tschida** be presented the Medal of Honor or the highest available recognition for his heroic deeds.

### MOTION:

**Senator Winder** thanked **Representative Hagedorn** for the presentation and following up on **Sgt. Tschida's** act of bravery. **HJM 7** is appropriate support to get this through the military process.

**Senator Winder** moved, seconded by **Senator McGee**, to send **HJM 7** to the Senate floor with a do pass recommendation.

### VOTE:

The motion carried by voice vote. **Senator Winder** will be the floor sponsor.

### GOVERNMENTAL APPOINTMENTS:

**Wendy Lively**, Ammon, ID, to the Bingo-Raffle Advisory Board  
**J. Marshall Garrett**, Boise, ID, to the Bingo-Raffle Advisory Board.

**Angie Vitek**, Charitable Gaming Coordinator for the Idaho Lottery, introduced **Wendy Lively** and **Marshall Garrett**. **Mr. Garrett** is the new appointment for Region 3. He is a business man, educator, and President of Opera Idaho. He runs the highest gross charitable bingo operation in Idaho. **Wendy Lively** is a reappointment for Region 6 and has served two terms on the Bingo Raffle Advisory Board. She is passionate, proactive, and has an extensive knowledge of the Idaho and Administrative codes. She runs a very successful bingo operation in Idaho Falls with the Eagles.

**Wendy Lively** explained that she has been working with bingo for twelve years and has been on the Board for eight years. She finds it interesting and informative to be on the Board. **Senator Davis** asked if there were conflicts that could arise because of the dual roles. **Ms. Lively** answered that they follow Title 67 and Chapter 52 of the statutes very closely. She tries to be very precise in both her bingo activity and board activity. If there are instances where disagreement occurs, they work through it and come to the best conclusion possible. If the statutes and the rules are followed and applied equally to everyone, there are no issues.

**Chairman McKenzie** thanked **Ms. Lively** for her service and her continued interest in the Board. He introduced **Mr. Garrett** and asked him to provide some background information, his current involvement with the Bingo Raffle Board, and what he sees as his role.

**Mr. Garrett** has been Chairman of the Board for Opera Idaho for the past six years and served on that Board for the four prior years. Two years ago Opera Idaho was approached about cooperating in a bingo hall, agreed to join, and they have been very actively involved in operating the bingo hall in West Boise which has been very successful. **Senator Davis** asked **Mr. Garrett** to answer the same question he asked of **Ms. Lively**. **Mr. Garrett** agreed with **Ms. Lively**, that by attending to the letter of the Code, conflicts are minimized. They operate on very strict guidelines, very specific percentages, and very clear operating protocols and standards. There is a definite hat for each role. His responsibilities to his district and the State are greater because of his responsibilities as an operator.

**Vice Chairman Fulcher** asked if **Mr. Garrett** had the time required for the Board with all his other activities. **Mr. Garrett** stated that he does have the time and doesn't see that as a problem.

**Chairman McKenzie** thanked **Mr. Garrett** for appearing before the Committee and for his interest in the opera and the Bingo Raffle Advisory Board.

**VOTE ON  
GUBERNATORIAL  
APPOINTMENTS:**

Vote on the appointments of Ruthie Johnson and Hyong K. Pak to the Idaho Commission on Human Rights.

**MOTION:**

**Senator Lodge** moved, seconded by **Vice Chairman Fulcher**, to send the gubernatorial appointment of **Ruthie Johnson** to the Human Rights Commission with the recommendation that it be confirmed by the Senate.

**VOTE:**

The motion carried by voice vote. **Senator Vick** will be the floor sponsor.

**MOTION:**

**Senator Malepeai** moved, seconded by **Senator Stennett**, to send the gubernatorial appointment of **Hyong K. Pak** to the Human Rights Commission with the recommendation that it be confirmed by the Senate.

**VOTE:**

The motion carried by voice vote. **Senator Heider** will be the floor sponsor.

**S 1298**

RELATING TO CODIFIER'S CORRECTIONS IN STATUTES to make various codifier corrections to the Idaho Code.

**Mike Nugent** explained that the "Codifier's Bill" is a little different this year, it has more substantial corrections like correcting bill numbers and references.

**MOTION:**

**Senator Winder** moved, seconded by **Senator McGee**, to send S1298 to the Senate floor with a do pass recommendation.

**Senator Hill** referred to pages 8-9 where the change strikes the definition of an interagency committee. Do we still have interagency committees or is there a definition elsewhere in code? **Mr. Nugent** said that section of code was repealed so there are no interagency committees anymore.

**VOTE:**

The motion carried by voice vote. **Chairman McKenzie** will be the floor sponsor.

**H 391**

RELATING TO THE PRIMARY ELECTION by removing the references to "presidential primary" or "presidential preference primary" on the primary election ballot since delegates to the national conventions are now being selected at party caucuses.



**Tim Hurst**, Chief Deputy, Secretary of State, brought this bill to the Committee. **Mr. Hurst** provided a brief history regarding election rules leading up to the introduction of this bill. At this time, both parties select their candidates and delegates at the party caucus. This bill deletes the language that refers to a presidential preference primary election. The Republican and Democratic caucuses will have been held well in advance of the primary elections that are held in May. Decisions would have been made prior to that time. There will be some financial savings by eliminating the presidential portion of the ballots. He asked the Committee to pass this bill to clean up the statute that does away with the references to the presidential primary because no one uses them since party caucuses now makes those selections.

**Senator Davis** asked if the Secretary of State is taking an experiment conducted by his party and codifying it. **Mr. Hurst** responded that the party supports this bill. They adopted it at their convention as a party rule and party rules take precedence over state law.

**Senator Davis** asked if the Democratic Party would be disadvantaged by this change and do they have a position on this. **Mr. Hurst** said that he had visited with Larry Grant, Director of the Democratic Party, and they were going to revisit it at their state committee meeting, but they wanted to stay with the caucus. **Senator Malepeai** said that the National Party rules do require them to hold caucuses in Idaho.

**Chairman McKenzie** asked for questions or comments related to **H 391**.

**MOTION:** **Senator McGee** moved, seconded by **Vice Chairman Fulcher**, to send **H 391** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Vice Chairman Fulcher** will be the sponsor.

**MINUTES:** Minutes for February 3, 2012.

**MOTION:** **Senator Hill** moved, seconded by **Senator McGee**, to approve the February 3rd minutes.

**VOTE:** The motion carried by voice vote.

**ADJOURNMENT:** Being no further business, the meeting adjourned at 8:40 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

**AMENDED #1 AGENDA  
SENATE STATE AFFAIRS COMMITTEE  
8:00 A.M.  
Room WW55  
Friday, February 17, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
PAGE RECOGNITION:	Recognition of Page, Rebekah Grad	
<a href="#"><u>H 369</u></a>	RELATING TO THE MILITARY DIVISION to create the Military Division Support Fund, to give authority to the Adjutant General to accept and manage gifts for the benefit of the Military Division, and to provide guidance for the Support Fund and oversight by the Board of Examiners.	Lt. Col. David Dahle
<a href="#"><u>S 1285</u></a>	RELATING TO THE STATE LOTTERY COMMISSION TO AMEND <b>Section 67-7434, Idaho Code</b> to modify the current dividend model from an annual prescribed distribution to an optional or more frequent transfer throughout the year.	Jeff Anderson, Director, Idaho State Lottery
<a href="#"><u>S 1286</u></a>	RELATING TO CHARITABLE BINGO AND RAFFLES TO AMEND <b>Sections 67-7709 and 67-7710, Idaho Code</b> , to allow an increase in expenditure percentages due to the increase in business costs for bingo and raffle licensees.	Jeff Anderson, Director, Idaho State Lottery
<a href="#"><u>RS21303</u></a>	RELATING TO THE IDAHO ENERGY RESOURCES AUTHORITY to reduce the amount of the surety bonds that officers must execute.	Ron Williams, Attorney, Williams Bradbury
<a href="#"><u>RS21330</u></a>	RELATING TO A MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM to add a provision for a repair waiver and a hardship waiver and for recommendations to the legislature from the DEQ.	Senator McKenzie
GUBERNATORIAL APPOINTMENTS:	Vote on Wendy Lively and J. Marshall Garrett, appointed to the Bingo-Raffle Advisory Board  Severina Sam Haws appointed as Administrator of the Office on Aging. Robert (Bob) Mooney appointed to the Idaho Energy Resources Authority.	
MINUTES:	Minutes of February 8th	Senators Fulcher and Malepeai

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Vice Chairman Fulcher  
Sen Davis  
Sen Hill  
Sen McGee

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, February 17, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, McGee, Winder, Lodge, Malepeai, and Stennett

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present. He reordered the agenda to accommodate guest speakers and other meeting conflicts.

**GUBERNATORIAL APPOINTMENTS:** **Sam Haws** as administrator of the Office on Aging.

**Chairman McKenzie** welcomed **Ms. Haws** and asked her to provide the Committee with some background and what her role will be within the Office on Aging.

**Ms. Haws** provided a brief overview of her work history, both as a Tax Commissioner and her twenty years experience in banking. The Idaho Office on Aging (OA) is very different from her past experiences. When **Ms. Haws** assumed this position, there had been a turnover for seven of the twelve staff members. That has offered opportunities to match skill sets to the needs of the OA. There is now a fully functional, dedicated, and hardworking team. New members of that team included the Administrator (Ms. Haws), the Deputy Administrator, and the Fiscal Officer. They all started the first week of July, just in time for the budget process.

There are three accomplishments of note made by the new team during the first six months: 1) Implementation of an expanded online resource center; 2) Resolution of policy differences between Idaho Food Bank and the Federal Administration on Aging; and, 3) Obtaining a grant in a joint effort with Medicaid, to assist disabled persons.

**Senator Hill** thanked **Ms. Haws** for her service on the State Tax Commission. He asked how many programs does the OA comply with and how many area agencies across the State do you work with? **Ms. Haws** answered that there are about fourteen grants to comply and the three areas that compose the largest part of the budget are congregate meals, home delivery, and case management. There are six area agencies located in Coeur d'Alene, Lewiston, Boise, Twin Falls, Idaho Falls, and Pocatello.

**Senator Lodge** asked if they support the Fit & Fall classes offered to seniors. **Ms. Haws** answered that the long term goal of the OA is to meet basic needs and to provide options to keep seniors healthy and at home.

**Chairman McKenzie** thanked **Ms. Haws** for appearing before the Committee. He introduced **Robert (Bob) Mooney**, Idaho Energy Resources Authority (Authority), and asked him to tell about the projects they have been working on for financing and other activities involving the Authority.

**Mr. Mooney** explained that there have been several opportunities over the last several years to obtain financing from various means, i.e., improved rates for Raft River and amended terms between Bogus Basin and Idaho Power. The Authority is currently the interim owner of a wind project and they are working with Idaho Falls Power and Lower Valley Electric. Upcoming projects include the Bonneville Power Administration's investigation into expanding into outside financing for two proposed power lines. It is a privilege to be the Chairman of this Board and **Mr. Mooney** is looking forward to serving another term.

**Vice Chairman Fulcher** asked for an explanation of how the duties of the Authority and PUC differentiate from one another and how they interact together. **Mr. Mooney** responded that the Authority was set up as an instrument to help the State to finance the transmission, distribution, or generating facilities for citizens in Idaho. There is no relationship with the PUC.

**Chairman McKenzie** thanked **Mr. Mooney**.

**PAGE  
RECOGNITION:**

Recognition of Page, **Rebekah Grad**.

**Chairman McKenzie** stated that this Committee gets the best pages in the Senate and it has been true this year. The Committee presented her with a watch, a letter of recommendation from the chairman, and a letter signed by the Committee thanking her for her service. He asked **Miss Grad** to tell about her future plans. **Miss Grad** said she will be finishing up CWI classes and getting her Associates Degree, riding her horse, working a full time job, and traveling to Australia to see her brother.

**H 369**

RELATING TO THE MILITARY DIVISION to create the Military Division Support Fund, to give authority to the Adjutant General to accept and manage gifts for the benefit of the Military Division, and to provide guidance for the Support Fund and oversight by the Board of Examiners.

**Lt. Colonel David Dahle**, Idaho Military Division (IMD), brought **H 369** to the Committee. This is the creation of a special account to be maintained in the IMD that allows the Adjutant General to accept and manage gifts given to the IMD Support Fund. These gifts could be used for a one time project or for the overall benefit of soldiers and airmen. This bill is structured to ensure that there are oversight and reporting provisions. This account will operate at no added cost to the state treasury and could, in fact, have a positive fiscal impact.

**Chairman McKenzie** asked if donations to this fund would be tax deductible. **Lt. Colonel Dahle** said they would not necessarily be deductible.

**Senator Stennett** asked what kind of programs might be possible and how does this fit into federal rules. **Lt. Colonel Dahle** responded that when people give gifts, the IMD has no statutory authority to accept those gifts. **H 369** would authorize IMD to accept those gifts. The donor could be specific about what they wanted the gift to be used for or leave that decision to IMD. There are federal rules that do apply and they limit what gifts can be accepted. By funneling these gifts through the state and the Adjutant General, a state employee, certain types of gifts that come to that community can be used for reasonable and proper functions without violating federal rules. **Senator Stennett** confirmed that there would not be a conflict with the federal rules by funneling this through the state. **Lt. Colonel Dahle** agreed.

**MOTION:**

**Senator Lodge** moved, seconded by **Senator McGee**, to send **H 369** to the Senate floor with a do pass recommendation.

**VOTE:**

The motion carried by voice vote. **Senator Lodge** will carry **H 369** on the Senate floor.

**S 1285**

RELATING TO THE STATE LOTTERY COMMISSION TO AMEND Section 67-7434, Idaho Code to modify the current dividend model from an annual prescribed distribution to an optional or more frequent transfer throughout the year.

**Jeff Anderson**, Director, Idaho State Lottery, said that **S 1285** deals with the frequency with which dividends are distributed to the stakeholders and beneficiaries. Current code requires that there should be a single, one time transfer after the conclusion of the fiscal year. This legislation allows periodic payments on a quarterly basis throughout the year as the money is earned. The Lottery Commission would factor in about 70% to make the quarterly payments and there would be an adjustment at the end of the fiscal year for the balance. There will be an impact for fiscal year 2013 because of transferring current year dividends and also making a one time, pay forward, for that first quarter. This is a good business practice for the benefit of the state and the bill is crafted so it can return to the annual distribution should interest rates begin to rise. This will make no difference in the distribution to the public schools and the permanent building fund.

**Chairman McKenzie** asked if, during a recent audit, this proposal was discussed or was that just an audit of current practices? **Mr. Anderson** responded that there had been an audit and the Office of Performance Evaluations looked at a variety of things in the operation of the lottery. However, best practices is not a part of their recommendations.

**MOTION:**

**Senator McGee** moved, seconded by **Vice Chairman Fulcher**, to send **S 1285** to the Senate floor with a do pass recommendation.

**VOTE:**

The motion carried by voice vote. **Chairman McKenzie** will sponsor **S 1285** on the Senate floor.

**S1286**

RELATING TO CHARITABLE BINGO AND RAFFLES TO AMEND Sections 67-7709 and 67-7710, Idaho Code, to allow an increase in expenditure percentages due to the increase in business costs for bingo and raffle licensees.

**Mr. Anderson** commented that the Office of Performance Evaluations examined this area of oversight and offered a number of recommendations, all of which the lottery concurred with. **S 1286** came from the operators of charitable gaming in Idaho, the Bingo and Raffle Advisory Board, and then through the Idaho State Lottery Commission. The changes relate to the limits operators are allowed to have for administrative expenses in charitable bingo gaming. Current code limits expenses to 15% of the gross revenue but over the years, those expenses have increased. The percentage to charity does not change, it remains at 20%. If an operator chooses to go over the 15% it would come out of the prize monies. There is a request from raffle operators where the same situation would apply. Percentages, established in 1992, have not changed, but, over the years, the costs have increased.

**Senator Stennett** asked how the percentages were determined at 15% and 18% and why was the raffle a larger percentage? **Mr. Anderson** answered that most of the expenses for bingo was fifteen percent with the exception of an unplanned, one time expense like an official audit. The raffle used a similar rationale and came to a reasonable percentage.

**Senator Hill** inquired about the 1994 gross proceeds compared with current proceeds. **Mr. Anderson** stated that, since the regulations have been enacted, there have been a number of new, licensed, charitable operators and some of them run big games. He will get the actual number for the Committee. **Senator Hill** noted that as the operations get larger, there are fixed costs that may not change. Why would the percentage need to change when the growth would account for increased revenue? **Mr. Anderson** answered that this affects the smaller operators more than the larger ones.

**MOTION:** **Senator Stennett** moved, seconded by **Senator Malepeai**, to send **S 1286** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Senator Stennett** will carry **H 1286** on the Senate floor.

**RS21303** RELATING TO THE IDAHO ENERGY RESOURCES AUTHORITY to reduce the amount of the surety bonds that officers must execute.

**Ron Williams**, Attorney, Williams Bradbury, presented **RS21303** to the Committee. This is a housekeeping bill that has to do with the bonding requirements for directors, officers, and agents of the Idaho Energy Resources Authority (Authority). The current requirement is a \$1.0 million bond. However, it is difficult to find that level of coverage. Most municipalities and cities go to the Idaho Counties Risk Management Program (ICRMP) for this type coverage. ICRMP does not offer this coverage in this amount; they offer a comprehensive insurance package at a level of \$500,000 and they do that for 700 entities. This legislation would allow for that same coverage to be offered to the Authority officers.

**MOTION:** **Vice Chairman Fulcher** moved, seconded by **Senator Lodge**, to send **RS21303** to print.

**VOTE:** The motion carried by voice vote.

**RS21330** RELATING TO A MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM to add a provision for a repair waiver and a hardship waiver and for recommendations to the legislature from the DEQ.

**Chairman McKenzie** relinquished the gavel to the Vice Chairman.

**Chairman McKenzie** noted that this has been seen before in a different form. After discussions with the DEQ, **RS21330** was drafted. This legislation provides for an exemption from the emissions testing requirements and would include a repair waiver and a hardship waiver. It conforms with federal regulations. In addition, the five year review will require the DEQ to make recommendations to the legislature for a determination as to whether to continue the program, modify it, or terminate it. This brings the DEQ back to explain the progress of the program. Co-sponsors are Canyon County legislators.

**MOTION:** **Senator McGee** moved, seconded by **Senator Lodge**, to send **RS21330** to print.

**VOTE:** The motion carried by voice vote.

The gavel was returned to the Chairman.

**MINUTES OF FEBRUARY 8TH:** **Vice Chairman Fulcher** moved, seconded by **Senator Malepeai**, to accept the minutes of February 8, 2012.

**VOTE:** The motion carried by voice vote.

**VOTE ON  
GUBERNATORIAL  
APPOINTMENTS**

Vote on Wendy Lively and J. Marshall Garrett appointed to the Bingo-Raffly Advisory Board.

**MOTION:**

**Senator Davis** moved, seconded by **Senator Winder**, to send the Gubernatorial Appointment of **Wendy Lively** to the Bingo-Raffle Advisory Board to the Senate floor with the recommendation that it be confirmed by the Senate.

**VOTE:**

The motion carried by voice vote. **Senator Vick** will sponsor **Ms. Lively** on the Senate floor.

**MOTION:**

**Senator Stennett** moved, seconded by **Senator McGee**, to send the Gubernatorial Appointment of **J. Marshall Garrett** to the Bingo-Raffle Advisory Board to the Senate floor with the recommendation that it be confirmed by the Senate.

**VOTE:**

The motion carried by voice vote. **Senator Winder** will sponsor **Mr. Garrett** on the Senate floor.

**ADJOURNMENT:**

**Chairman McKenzie** thanked the Committee and, being no further business, the meeting adjourned at 8:45 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary



**AMENDED #2 AGENDA  
SENATE STATE AFFAIRS COMMITTEE  
8:00 A.M.  
Room WW55  
Monday, February 20, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS21337</u></a>	PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF IDAHO to provide that the rights to hunt, fish, and trap are preserved for the people of Idaho.	Senator Heider
GUBERNATORIAL APPOINTMENT:	Jim Rehder, Cottonwood, ID, to the Idaho Lottery Commission	
	James C. Hammond, Coeur d'Alene, ID, to the State Building Authority	
<a href="#"><u>SCR 116</u></a>	STATING FINDINGS OF THE LEGISLATURE to authorize the Legislative Council to appoint a Committee to undertake and complete a study of the feasibility for the State to obtain primacy over regulation of wastewater discharges to surface water.	Senator Hammond
<a href="#"><u>H 405</u></a>	RELATING TO ELECTRONIC CIGARETTES to make it illegal to sell electronic cigarettes containing nicotine to minors.	Senator Hammond
<a href="#"><u>RS21242</u></a>	RELATING TO WORKER'S COMPENSATION that shall be paid for disability or death resulting from certain firefighter occupational diseases.	Mike Walker, Professional Fire Fighters of Idaho
VOTE ON GUBERNATORIAL APPOINTMENTS:	Sam Haws appointed as Administrator of the Office on Aging and E. Robert Mooney appointed to the Idaho Energy Resources Authority	
PAGE INTRODUCTION:	Nathan Chelson	

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie	Sen Winder
Vice Chairman Fulcher	Sen Lodge
Sen Davis	Sen Malepeai
Sen Hill	Sen Stennett
Sen McGee	

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, February 20, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, McGee, Winder, Lodge, Malepeai, and Stennett

**ABSENT/EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present. He welcomed **Senator Heider** to present the first item on the agenda.

**RS21337** PROPOSING AN AMENDMENT TO ARTICLE I OF THE CONSTITUTION OF THE STATE OF IDAHO to preserve the rights of Idahoans to hunt, fish, and trap.

**Senator Davis** explained that **RS21337** deals with a modification to **SR104** which was heard by this Committee earlier this session. The Idaho Water Users had some concerns and an opinion was requested from a water law attorney regarding recent court cases about bodies of water. The language on line 25 which states "or establish any minimum amount of water in any water body" addresses those concerns and clarifies the issue.

**MOTION:** **Senator Davis** moved, seconded by **Senator McGee**, to send **RS21337** to print.

**VOTE:** The motion carried by voice vote.

**GUBERNATORIAL** Jim Rehder to the Idaho Lottery Commission

**APPOINTMENTS:** James C. Hammond to the State Building Authority

**Chairman McKenzie** introduced **Jim Rehder** and asked him to tell the Committee about himself and the Commission.

**Mr. Rehder** was born and raised in Cottonwood, Idaho, and graduated from the University of Idaho. He was an educator for fifteen years, worked in the prison system for fourteen years (four years as a prison warden), and worked on a family farm for fifteen years. After retirement, he served as an Idaho County Commissioner for two terms. **Mr. Rehder** has served on numerous boards and committees.

**Mr. Rehder** deemed that the Lottery Commission would be attractive in the sense it provides for responsible gaming. The integrity of the agency is "rock solid" and it allows the Commission to provide money for schools and public buildings.

**Senator Davis** asked if **Mr. Rehder** had found areas at the Lottery Commission that could be improved. **Mr. Rehder** responded that this is a complex business and he has been in a learning curve but this is a "top notch" organization and they are continually briefed by the administrative staff and recommendations are made where appropriate. **Senator Davis** inquired if there were things the legislature could or should be doing to help the Commission. **Mr. Rehder** stated that there is some concern about legislation at the national level regarding the control of gaming nationally. The Governor and Director Anderson are watching that legislation closely.

**Jeff Anderson**, Director, Idaho Lottery Commission, supports **Mr. Rehder's** appointment. **Mr. Rehder** is engaged in advancing the mission of the lottery to provide responsible means for entertainment that can maximize funding for the beneficiaries.

**Chairman McKenzie** introduced **Senator Hammond**.

**Senator Hammond** stated that he was first appointed to this Commission by **Governor Batt**. Currently, the Commission is seeking to refinance some bonds at lower rates which will create a substantial savings for the State of Idaho. The work of the Authority is to find the best rates possible to build buildings for the State. The State ends up with quality buildings built at a reasonable price. It is always a learning curve but he enjoys serving in this capacity.

**Senator Davis** asked would there be a conflict serving on the Authority if you decide to also serve at North Idaho College (NIC)? **Senator Hammond** doesn't see a conflict. **Senator Davis** asked if the Authority has ever pursued bonding for a community college. **Senator Hammond** confirmed that they had. **Governor Kempthorn** convinced the legislature to authorize financing for all of the state facilities including all community colleges. Also, at this time, a nursing building was built. **Senator Davis** asked how, if you were President of NIC, would you handle your responsibilities on the Authority. **Senator Hammond** said he would handle it as any other facility would be handled. They don't identify who gets the funding, that decision is made by the legislature. The Authority is there to find the best rate of interest for funding and to manage the construction of the facility. There isn't a conflict.

**Chairman McKenzie** invited **Senator Hammond** to remain at the podium to present **SCR 116**.

#### **SCR 116**

STATING FINDINGS OF THE LEGISLATURE to authorize the Legislative Council to appoint a Committee to undertake and complete a study of the feasibility for the State to obtain primacy over regulation or wastewater discharges to surface water.

**Senator Hammond** explained that **SCR 116** is a resolution to bring together some legislators and other players to study the issue of primacy regarding clean water and the management thereof which is currently managed by the Environmental Protection Agency (EPA). EPA issues any permits for discharge into streams such as permits for logging roads that may affect any kind of stream or the agriculture community must get permits for application of certain kinds of herbicides and pesticides. The challenge is that EPA will not issue any permits for the next year because they are in the midst of redefining their permitting organization.

Secondly, the state has lost control over it's own destiny. **Senator Hammond** gave an example where Washington has control over the criteria for some permits in Northern Idaho and the Idaho Department of Environmental Quality (IDEQ) is not included in those discussions.

This is not an effort to change any standard or waste water discharge, it is only an effort to allow the permitting of that to be done by the state. This would streamline the process for those cases where permits from both the EPA and the IDEQ are required. The delay in getting these permits affects many different industries and could eliminate any ability to grow. The proposed permitting is scientifically impossible, and diminishes the capacity of wastewater systems in Northern Idaho. This is not an issue limited to one area, it is an issue for business, industry, agriculture, and timber. The financing to build a bureaucracy to issue permits will be met by spreading the cost over all the users.

**Senator Stennett** asked about the cost of \$10,000 for the interim committee. What are those costs? **Senator Hammond** responded that \$10,000 is the price tag for the interim committee. The interim committee will develop the costs of the operation. **Senator Stennett** asked when the interim committee would convene and how would the members be selected. **Senator Hammond** answered that the selection would be the same as any other committee and it should convene during the summer with a recommendation by next session. .

**Alan Prouty**, Chairman, Environmental Committee of the Idaho Association of Commerce (IACI) and Industry, testified in support of **SCR 116**. **Mr. Prouty** identified four issues that need further study and that the interim committee is the proper place to discuss these and other issues. (Testimony is attached.)

**Jayson Ronk**, Vice President, IACI, testified in support of this resolution.

**Ken Harward**, Association of Idaho Cities (AIC), testified in support of the resolution. Idaho cities may be the most regulated and have a vested interest in the permitting, the outcome of those permits, the cost involved, and the suspended issue. They support the study and view it as very important.

**Elizabeth Criner** spoke on behalf of the Northwestern Processors Association who serves as an advocate for processors in Idaho, Oregon, and Washington. NWFPFA supports **SCR 116**.

**John Eaton**, Governmental Affairs Director, Idaho Association of Realtors, testified in support of **SCR 116**. A new study would be appropriate at this time to determine what the cost of this process would be. There are some occurrences around the state and in the region that have impacted the construction industry. Idaho is one of four states that does not have primacy. The construction industry is aware of the requirements since every site over one acre is required to have permits that fall under EPA permitting for runoff from the properties. They would be willing to work with the sponsor and the interim committee to obtain the best information to make appropriate decisions for the future.

**Senator Hill** asked **Mr. Eaton** to elaborate on the reasons that the state has not been issuing these permits all along. As we consider doing this, we should know why we haven't done it in the past. **Mr. Eaton** stated that the number one reason was how to fund that project. Funding was never secured. Historically, the construction industry has not been as supportive of this type of position because by applying for a permit online, the permit was issued. No one from the federal government came around to see if the activity was done correctly but that has changed. The hard hand of the federal government is intruding into developments around the State. It would be better to deal with the people they know and have more input into the decisions that are made. In working with the State Transportation Department, there has been information exchanged and good examples from other states that they are working with regarding primacy that has been very successful.

**Jeremy Pisca**, attorney, Rische & Pisca Law Firm, and representing Potlatch. Potlatch agrees that the time to study this issue has come and from their perspective, a better relationship can be formed with people from within the state agencies that understand the economies of the state. **Mr. Pisca** also represents the Idaho Building Contractors Association which, for years has resisted primacy. A member of that Association would like to encourage the support of this resolution.

**Senator Hammond** stated that the Idaho Transportation Department brought up this issue because their projects are being held up because they can't get the permits from EPA because they are not issuing permits at this time.

**Senator Malepeai** asked what the significance was of doing a concurrent resolution rather than going through the legislative council. **Senator Davis** responded that each body runs the concurrent resolution requesting the interim committee it desires and then towards the end of the session, the majority/minority leadership will decide which ones can proceed to the body. This senate concurrent resolution will be held by the House pending that meeting and decision to go forward. Should the concurrent resolution pass the other body, then State Affairs will decide whether to formally fund it and then determine the makeup of the committee. This approach is consistent with the way to handle this process.

**MOTION:**

**Senator Hill** moved, seconded by **Senator McGee**, to send **SCR 116** to the Senate floor with a do pass recommendation.

**VOTE:**

The motion carried by voice vote.

**H 405**

**Senator Hammond** opened discussion on **H 405**.

**Senator Davis** referred to page 7, Section 11 of the bill and asked if there were any preemption standards that would preclude us from doing this. Generally, the use and sale of tobacco is a highly regulated industry at the federal level. **Senator Hammond** stated that they are not regulating tobacco, they are regulating the sale of nicotine. The federal level of oversight is not known but it is better to error on the side of caution to make sure this type of product can only be sold to those people over eighteen. **Senator Davis** asked if an Attorney General's opinion had been requested for the limited question of preemption. **Senator Hammond** said it had not. **Senator Davis** asked if this is modeled after other states. **Senator Hammond** answered that this is model legislation and the health districts helped put it together.

**Senator Hill** referred back to Section 11, and asked if it only applied to the Idaho seller shipping the product out and not the retailer receiving the shipment. Is this the seller selling to the ultimate consumer, the seller is located in Idaho, and the seller must provide this information? **Senator Hammond** agreed that was correct.

**Senator Hammond** stated that electronic cigarettes are relatively new to society. Those who want to smoke can without exposing others to the smoke from the cigarette. The challenge is that electronic cigarettes are being sold at kiosks in malls to anyone who wants to buy them because there is no regulatory prohibition to prevent kids under eighteen to purchase this product. This bill defines what an electronic cigarette is and it says that they can't be sold to kids under eighteen. He went on to explain the nicotine contents of cigarettes and the toxic effects. An estimated lethal dose for a child is ten milligrams, that is about one-half a pack of cigarettes. More or less nicotine can be put into the electronic cigarettes and they are not in childproof packaging. Children do need to be protected because they get a much higher dosage which creates health issues.

**Senator Davis** referred to MD.com information that said the FDA has decided to oversee electronic cigarettes the same way it does tobacco products. He is not questioning the legislation, he plans on supporting it in Committee and on the floor. It does not say the state is precluded for regulating the product – is there concurrent jurisdiction? **Senator Hammond** will follow up on this question.

**Senator Stennett** noted that there was no fiscal impact but somebody has to regulate this if it passes. Under what auspices do you envision this working? **Senator Hammond** said it would be regulated in the same way as any tobacco products. The concern is not as much enforcement as it is making it clear that those sales cannot be made. Most retailers would agree with that restriction and follow it.

**Chairman McKenzie** asked how is this like other nicotine products such as nicotine gum or nicotine patches. Is this a way of ingesting nicotine? **Senator Hammond** said they are not regulating the product itself, it is regulating the age at which it can be sold. Other products have a limited amount of nicotine in them, this product can be adjusted to hold more nicotine than others. This is not regulating the product, just the sale of the product.

**Senator Davis** asked if this is perceived to be a gateway device or is it the device itself that would lead to smoking. **Senator Hammond** responded that any way that nicotine is ingested could create an addiction.

**Senator Davis** noted that it is the addictive nature of nicotine in cigarettes that keeps people coming back and it is the carcinogens that are the more troubling aspect of consumption. The e-cigarette has only the nicotine aspect. **Senator Hammond** concurred.

**Senator Hill** stated that electronic cigarettes could be more dangerous than regular cigarettes because of the level of nicotine that can be placed in them where additional nicotine cannot be added to a regular tobacco product. **Senator Hammond** agreed.

**MOTION:** **Senator Hill** moved, seconded by **Senator Lodge**, to send **H 405** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. Senator Hammond will be sponsor of **H 405**.

**RS21242** RELATING TO WORKER'S COMPENSATION that shall be paid for disability or death resulting from certain firefighter occupational diseases.

**Mike Walker**, Executive Vice President, Professional Firefighters of Idaho, brought this bill to the Committee. This issue has been worked on for over ten years with numerous print hearings and one Committee hearing. **RS21242** has come from a subcommittee. The main committee opted not to take a stand but urged the subcommittee to bring it to the legislature. There is a large body of research compiled of dozens of studies over a course of years that shows that firefighters are susceptible to certain cancers. With these occupational diseases, it is nearly impossible to show what exposures led to the disease because they are usually the result of chronic exposure over the course of time. The work comp system is stacked against the claimant in occupational disease cases. In response to this, forty states have passed similar legislation to presume that certain diseases are occupationally related for firefighters unless proven otherwise. This legislation will not provide an unfair advantage to the claimant in a disputed claim.

**Senator Davis** asked if the state of Washington has similar language of presumption that is in this legislation. **Mr. Walker** said they don't. They are much more liberal on the time lines, the number of diseases that are included in their statute, and the definition of what would be rebuttable. **Senator Davis** stated that sub part (c) is the most important part of the legislation. Is there something similar to that in Washington's code or even more protective of the employer. **Mr. Walker** replied that Washington was in the spectrum of states that were looked at. This legislation is modeled after New Mexico which is a more conservative state.

**MOTION:** **Senator Winder** moved, seconded by **Vice Chairman Fulcher**, to send **RS21242** to print.

**VOTE:** The motion carried by voice vote.

**VOTE** **ON GUBERNATORIAL APPOINTMENTS:**  
**Sam Haws** as Administrator for the Office on Aging  
**E. Robert Mooney** to Idaho Energy Resources Authority

**MOTION:** **Senator Lodge** moved, seconded by **Senator McGee**, to send the gubernatorial appointment of **Sam Haws** to the Office on Aging to the floor with the recommendation that it be confirmed by the Senate.

**VOTE:** The motion carried by voice vote. **Senator Lodge** will be the floor sponsor.

**MOTION:** **Senator Winder** moved, seconded by **Vice Chairman Fulcher**, to send the gubernatorial appointment of **E. Robert Mooney** to the Idaho Energy Resources to the floor with the recommendation that it be confirmed by the Senate.

**VOTE:** The motion carried by voice vote. **Senator Winder** will be the floor sponsor.

**PAGE INTRODUCTION:** **Chairman McKenzie** introduced **Nathan Chelson** as the new page for the second half of the session. Chelson is a familiar name in the Senate because the family produces lots of good pages. He asked **Nathan** to tell the Committee about himself, about his family, and why he is interested in being a page.

**Nathan** answered that he is the fourth child of seven, i.e., middle child, and he is the fourth Chelson to serve. He came here because of his interest in government and he is glad to have this opportunity.

**ADJOURNMENT:** Being no further business, **Chairman McKenzie** adjourned the meeting at 9:01 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

**AMENDED AGENDA #1**  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Room WW55**  
**Wednesday, February 22, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS21255</u></a>	STATING FINDINGS OF THE LEGISLATURE rejecting an Idaho Fish and Game Commission rule docket relating to rules governing licensing.	Senator Pearce
<a href="#"><u>RS21321</u></a>	RELATING TO PUBLIC WORKS : The Open Access to Work Act provides for the efficient and cost-effective procurement of goods and services by political subdivision as market participants.	Senator Pearce
<a href="#"><u>RS21316</u></a>	RELATING TO THE DIRECTOR OF THE IDAHO STATE POLICE to give the Governor authority to request the Idaho State Police to provide security/protection for the Lieutenant Governor and his/her immediate family as needed.	Senator Davis
<a href="#"><u>RS21346</u></a>	RELATING TO BEER to provide the same exception for Idaho breweries that is available to Idaho wineries that allows for a financial interest in or aid to retailers.	Senator Keough
PRESENTATION:	ANNUAL REPORT on the Idaho Emergency Communications Commission (ECC)	Garret Nancolas, Mayor, City of Caldwell and Commission Chairman
PRESENTATION:	ANNUAL REPORT on the Statewide Interoperable Executive Council (SIEC)	Chief Mark Lockwood, Chief of Police, Sandpoint and Commission Chairman
GUBERNATORIAL APPOINTMENTS:	Vote on the appointment of Jim Rehder to the Idaho Lottery Commission	

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Vice Chairman Fulcher  
Sen Davis  
Sen Hill  
Sen McGee

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, February 22, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, Winder, Lodge, Malepeai, and Stennett

**ABSENT/EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present.

**RS21255** STATING FINDINGS OF THE LEGISLATURE rejecting an Idaho Fish and Game Commission rule docket relating to licensing.

**Senator Pearce** advised that **RS21255** is a rejection for administrative rule 13-0104-1102. This bill concerns the Land Owner Appreciation Tag Pull Program and the rule was brought to add four stipulations so the Idaho Fish and Game Commission could increase the number of those tags. The Resources and Environment Committee rejected the rule and asks that **RS21255** be printed.

**MOTION:** **Senator Hill** moved, seconded by **Senator Lodge**, to send **RS21255** to print.

**VOTE:** The motion carried by voice vote.

**RS21321** RELATING TO PUBLIC WORKS: The Open Access to Work Act provides for the efficient and cost-effective procurement of goods and services.

**Senator Pearce** explained that in the 2011 Legislative Session there were two bills that dealt with unfair labor practices, S1006 dealing with Project Labor Agreements and S1007 dealing with Job Targeting. These two bills were rejected by District Court Judge Winmill because, according to **Senator Pearce**, the intent was not sufficiently clear. The goal of the bill is to have the Idaho Government as the contractor, and acting as the market participant purchaser of construction. By doing this, the state would not be in a position of acting with what could be construed as controlling a labor activity. **Judge Winmill** thought of this action as preempted by the National Labor Relations Act.

**Senator Stennett** asked if the contracting industry already predetermines the amount of wages, wage rate, type, or amount or rate of employee benefits.

**Senator Pearce** stated that the intent of the language on page 2, (c) (i), allows merit shops. It is a free market instead of being locked into exact amounts. It allows the contractor to deliver for the least amount. Idaho is a "right to work state" and the language allows for this intent in the contract process.

**Senator Davis** found some discrepancies in the bill and asked if the Attorney General had reviewed the legislation and determined if it would pass Judge Winmill's scrutiny. **Senator Pearce** stated that they have not had the Attorney General look at the legislative language. **Senator Davis** explained that, should the Committee be inclined to print this legislation, there should be some strong counsel from the Attorney General so that the Senate may measure the risk it takes by advancing the legislation.

**Vice Chairman Fulcher** stated that these bills came before the Committee last year and were important enough, at that time, for the legislative branch to send them to the floor and pass them. This is a print hearing and he would like to see the bills printed with the caveat that a format change be inserted.

**MOTION:** **Vice Chairman Fulcher** moved, seconded by **Senator Winder**, to send **RS21321** to print with a technical correction and C1 added.

**VOTE:** The motion carried by voice vote.

**RS21316** RELATING TO THE DIRECTOR OF THE IDAHO STATE POLICE to give the Governor authority to request the Idaho State Police to provide security/protection for the Lieutenant Governor.

**Senator Davis** advised that **RS21316** deals with security and protection for the lieutenant governor and his immediate family when he represent the State of Idaho and the Governor on trade missions. The current statute does not give the ability to the Governor to direct security protection for the lieutenant governor. This bill will give the Governor the discretion to provide that protection as it is deemed appropriate.

**MOTION:** **Vice Chairman Fulcher** moved, seconded by **Senator Lodge**, to send **RS21316** to print.

**VOTE:** The motion carried by voice vote.

**RS21346** RELATING TO BEER to provide the same exception for Idaho breweries that is available to Idaho wineries.

**Chairman McKenzie**, standing in for **Senator Keough**, explained that **RS21346** adds consensus language to an RS that was previously brought before the Committee on this issue.

**MOTION:** **Senator Winder** moved, seconded by **Senator Davis**, to send **RS21346** to print.

**VOTE:** The motion carried by voice vote.

**PRESENTATION:** ANNUAL REPORT on the Idaho Emergency Communications Commission (ECC)

**Eddie Goldsmith, Commission Chairman**, reported that, currently, the Idaho Emergency Communication Commission (ECC) has an operating budget that is 1% of the 911 revenue received throughout the state. The operating budget is \$239,000. In 2008, legislation was passed to collect a 25¢ grant fee which was to come to the Commission to assist rural counties in funding upgrades of their 911 centers. The Commission set a priority on where the funds would be applied: 1) Basic 911 - the ability to just receive the phone call; 2) Enhanced 911 - allows the center to receive on a land line from your home with the name, address, and the agencies that would respond to the address attached; 3) Phase 1 - is the ability to locate a cell phone call from a tower; and, 4) Phase 2 - the ability to locate a cell phone caller. It is the desire of the Commission that, no matter where people are in the state, they have the same 911 service.

The map on page 14 of the report, shows the status of the state at the time the 25¢ was implemented. The grant fund allowed 36 counties to participate and generate a revenue of approximately \$1.7M a year. The Commission's goal was, by the year 2014 when the 25¢ fee will sunset, to have everyone moved to Phase 2. Page 18 shows the status at the end of 2012. Within three years, the Commission has made great strides in moving the state to Phase 2 compliance in all counties. The Commission is happy to inform the Committee that they are currently three years ahead of their goal.

The Commission recently gave out grants to seven counties to assist them

in moving forward to Phase 2. Currently the Commission has 23 projects in progress statewide to move the entire state to Phase 2. The only county that will not reach Phase 2 by the end of the year will be Butte County. The Commission will be working with them to move that county forward.

**Senator Davis** asked is there something that is a barrier to moving Butte County to compliance? **Mr. Goldsmith** stated that he was not aware of a problem other than just getting the county to start moving forward. The Commission has given them \$250,000 of grant monies to implement the system. Butte County has applied for a grant and the Commission has awarded them the money. It is presently sitting in a fund for them to proceed. **Mr. Goldsmith** noted that for any county, the biggest obstacle for changing over from basic to enhanced, is creating a master street address guide. Sometimes the addressing is not complete in the county and they have to go back and readdress; he suspects Butte County is working on the readdress issue.

In conclusion, the Commission's goal was to implement Phase 2 by 2014. Since they are three years ahead of their goal they will start actively working on the next generation 911. (See Attachment 1 for complete disclosure of their 2012 Annual Report.)

**PRESENTATION:** ANNUAL REPORT on the Statewide Interoperable Executive Council (SIEC)

**Chief Mark Lockwood, Chief of Police, Sandpoint, and Commission Chairman**, stated that one of their biggest accomplishments is that they continued to work with their governance partners, who are locals across the state. They have done that through the District Interoperability Governance Boards (DIGBs). This last year they took some of the governance partners from a local site and appointed one member from each of the six districts as a voting member on the SIEC. They developed a business, operational and strategic plan for guidance.

The business model was developed in order to provide a foundational guide for the delivery of dependable robust service and sustainable improvements to the statewide interoperable communications system recognizing the need for a sustainable funding source in order to continue development to sustain this system.

The purpose of the operational plan is to develop a statewide system of standards which will provide the basis for the consistent management of the statewide communication system. The second phase of the plan will create a statewide basis with basic concepts through the use of regional channel designs for rapid access. The Operational Plan will also continue to provide address situations for differing radio frequencies across the state.

The strategic plan was drawn from CTA Communications. Thirteen sites were identified where a seamless, wide-area communication system is possible. By developing the thirteen sites, there will be communications in all transportation corridors and major population areas. They have identified a realistic dollar figure for the final phase of this statewide system. (See Attachment 2 for complete disclosure of their 2011 Annual Report.)

**VOTE ON  
GUBERNATORIAL  
APPOINTMENTS:**

**Jim Rehder**, to the Idaho Lottery Commission.

**MOTION:**

**Senator Malepeai** moved, seconded by **Senator Stennett**, to send the gubernatorial appointment of Jim Rehder to the Idaho Lottery Commission to the floor with the recommendation that it be confirmed by the Senate.

**VOTE:**

The motion carried by voice vote.

There being no further business, the meeting adjourned at 8:50 a.m.

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Chairman McKenzie  
Chairman

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Twyla Melton  
Secretary

**AMENDED AGENDA #1**  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Room WW55**  
**Monday, February 27, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>S 1323</u></a>	RELATING TO BOARD OF TRUSTEES OF LIBRARY DISTRICTS to provide concise procedures in the event of a recall for library district trustees.	Senator Keough
<a href="#"><u>S 1344</u></a>	RELATING TO BEER to provide the same exception for Idaho breweries that is available to Idaho wineries that allows for a financial interest in or aid to retailers.	Senator Keough
<a href="#"><u>RS21273C1</u></a>	TO THE PRESIDENT OF THE UNITED STATES, THE SENATE, AND THE HOUSE OF REPRESENTATIVES AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES to request that the US Department of Health & Human Services reject and reverse regulation regarding new "prevention services".	Senator Nuxoll
<a href="#"><u>RS21323C1</u></a>	RELATING TO THE MEDICAL CONSENT AND NATURAL DEATH ACT to protect patients from the involuntary denial of food and fluids, and from life-preserving medical treatment when denial is based on disability, age, or terminal illness.	Senator Nuxoll
<a href="#"><u>RS21297</u></a>	STATING FINDINGS OF THE LEGISLATURE authorizing the Department of Parks and Recreation to enter into agreements with the Idaho State Building Authority to pay all bonds issued for the Vardis Fisher property and others in the Hagerman Valley in order to concentrate limited resources to enhance recreational opportunities in the Hagerman Valley.	Senator Winder
<a href="#"><u>RS21319C2</u></a>	RELATING TO ABORTION to require the use of an ultrasound prior to an abortion and to provide an additional resource listing of places where pregnant mother's can obtain an ultrasound free of charge. When enacted, this legislation will codify the standard use of an ultrasound and referrals as described.	Julie Lynde, Kerrey Uhlenkott, and Jason Herring
<a href="#"><u>RS21102</u></a>	RELATED TO THE IDAHO TRANSPORTATION BOARD to address the difficulties, inequities and irregularities when processing access applications. This change should make the access application process more equitable and encourage economic development.	Senator Winder

[RS20990C2](#)

RELATED TO AMENDMENTS TO THE UNITED STATES CONSTITUTION by the addition of a new *Chapter 93, Title 67, Idaho Code* related to a constitutional convention.

Senator  
McKenzie

[RS21372](#)

STATING FINDINGS OF THE LEGISLATURE AND MAKING APPLICATION TO THE CONGRESS OF THE UNITED STATES to call for an Article V Convention to consider specific amendments to the United States Constitution.

Senator  
McKenzie

VOTE ON  
GUBERNATORIAL  
APPOINTMENT:

James C. Hammond, Coeur d'Alene, ID, to the State Building Authority

Senator  
McKenzie

MINUTES:

February 1, 2012

Senators Hill  
and Stennett

February 10, 2012

Senators  
Winder and  
Malepeai

February 13, 2012

Senators  
Fulcher and  
Davis

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Vice Chairman Fulcher  
Sen Davis  
Sen Hill

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

Twyla Melton  
Room: WW42  
Phone: (208) 332-1326  
email: [tmelton@senate.idaho.gov](mailto:tmelton@senate.idaho.gov)

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, February 27, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Davis, Hill, Winder, Lodge, Malepeai, and Stennett

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present and asked **Senator Keough** to present **S 1323**.

**S 1323** RELATING TO BOARD OF TRUSTEES OF LIBRARY DISTRICTS to provide concise procedures in the event of a recall for library district trustees.

**Senator Keough** stated that current law requires recall procedures follow the procedures for the recall of county commissioners. Of the current 54 library districts, only 9 are county wide. Staff in the Secretary of State's office advised that for a recall election for library district trustees who were contested in their elections and won, signatures for recall would have to be collected from registered electors of the county (not necessarily aligned with the library district) equal to 20% of the number of electors registered to vote at the last general election of the county.

As an example, a library district in North Idaho has 1,007 residents eligible to vote. To bring a valid recall petition, 20% of registered electors in the county would need to be collected, which equals 4,578, more than four times the number of people in the library district. This doesn't seem appropriate.

During the print hearing it was asked if this change would lower the threshold and cause a rush of recall elections. New language points to a section of code (34-1702(5)), which states that the recall petition must be signed by registered electors in the district equal to 50% of the number of electors who cast votes in the last election of the district.

Lines 24-27 show the requirements for recall of a trustee that is not elected; "the number of district electors required to sign ..... must be not less than fifty, or twenty percent of the number of votes cast in the last trustee election held in the library district, whichever is greater." The proposed change brings contested election recall standards in line with current requirements for recall in a non-contested election. This is an effort to clarify current statute. Without the change, recall would be very difficult for roughly 83% of library districts that are not county wide. This does not attempt to lower the threshold for a recall election, it simply lines up recall election laws for library districts with the populations they serve. Tim Hurst with the Secretary of State's office was available to answer technical questions, as well as the Idaho Library Association. Both support the change.

**Senator Davis** stated that he supported the concept, but was concerned about the direct reference to Idaho Code 34-1702(5). He asked what the section in lines 22-27 deals with.

**Senator Keough** indicated that the section deals with procedures for library trustee recalls when they were appointed or when candidates assumed the position in an uncontested election.

**Senator Davis** asked why there were differences between the standards for contested and non-contested election recall procedures and why there would be a lower standard for recalling a trustee that was not in a contested election. **Senator Keough** explained that recall for a library district trustee who won the seat in a contested election would redirect the process to 50% of the electors who cast votes in that election in the district, as opposed to the process in lines 22-27, where, if they were not elected, they would be required to get 20% votes cast in the last trustee election. The two different standards are already in existence whether the change takes place or not and the lower standard is already in place for non-contested elections. This legislation intends to make sure registered electors in the library district had the ability to recall a trustee. The bill does not deal with that particular issue. **Senator Davis** questioned why the bill was tied to 34-1702(5) instead of the language in code in lines 24-27, and why the standards were not made congruent. **Senator Keough** indicated she was not involved in the history of the statute, and could not adequately answer the question.

**John Watts**, Idaho Libraries Association (ILA), indicated their support of the original intent of the legislation. In response to **Senator Davis'** question, he understands that it is a double standard. Many times a library district trustee was not a contested election and as elections became contested more and more often, these standards evolved. The issue this legislation deals with makes sense and the Library Association agrees with the changes.

**Senator Davis** asked **Mr. Watts** why there should be two different standards. **Mr. Watts** indicated that there is an incongruence that should be addressed, but this legislation does not deal with that. It is an old statute and it makes sense to align them at some point. **Senator Davis** suggested using this legislation to make the standards congruent. **Mr. Watts** indicated that the ILA would be open to fixing this legislation to reflect those concerns, or would allow this legislation to pass now.

**Senator Davis** asked **Mr. Hurst** of the Secretary of State's office, why there would be two different standards for recall. **Mr. Hurst** indicated that several special districts had their own recall statutes and when trying to consolidate those in 1989, some things were missed. He went on to state that deleting lines 24-27, would allow it to fall in line with Idaho Code 34-1702(5), the code for all other taxing districts. **Mr. Hurst** indicated that the history of county commissioner's language stemmed from county commissioners being elected by zones. Unifying the laws created problems.

**Senator Keough** indicated that the intent is to make the election process relevant to the district and not set an inappropriate standard in which districts smaller than the county would have recall situations beyond a district boundary.

**Senator Hill** asked for **Senator Keough's** preference regarding what she would like to do with the bill. **Senator Keough** indicated that timeliness was important and wanted to ensure ILA got a chance to look at any change in language, but would commit to working on this in future sessions. **Senator Davis** indicated this could be hurried in and out of the amending order to address the issue rather than taking incremental steps as long as the sponsor and ILA can strike a deal. **Senator Winder** indicated the legislation had time for an amendment if that was the choice. **Senator Keough** and **Mr. Watts** agreed a fix was needed and the amending order would be appropriate if the committee chooses.



**MOTION:** **Senator Davis** moved, seconded by **Senator Lodge**, to send **S 1323** to the 14th order.

**VOTE:** The motion carried by voice vote. **Senator Keough** will sponsor the bill on the Senate floor.

**S 1344** RELATING TO BEER to provide the same exception for Idaho breweries that is available to Idaho wineries that allows for a financial interest in or aid to retailers.

**Senator Keough** introduced two constituents to speak to **S 1344**: **Fred Colby**, Owner, Laughing Dog Brewery (testimony attached) and **Jeff Whitman**, Owner, Selkirk Abbey Brewing. This legislation intends to allow a brewer who produces fewer than 30,000 barrels of beer annually to be allowed financial interest in one additional brewery producing fewer than 30,000 barrels annually. This legislation could impact micro breweries across the state although it is more immediate in Northern Idaho. It would allow partnerships to occur, expertise to be utilized, and jobs to be expanded.

**Mr. Colby** said that he owns a brewery in Ponderay, employs sixteen people, and ships to thirty-six states and Canada. He would like to create another business with business partners similar to the existing one but cannot due to current code. Idaho code was modified allowing wineries to exercise a similar expansion and this bill would allow breweries to do the same.

**Mr. Whitman** stated that he is one of two remaining owners of Selkirk Abbey Brewing which is currently unopened and unlicensed. Their application for a brewers license was denied by the state because their business partner, **Fred Colby**, owned another brewery. **Mr. Colby** has since resigned so the remaining partners could continue with the licensing process. It is unfair to **Mr. Colby** and potentially devastating to the company's business plans. His departure means the loss of knowledge and extensive lines of distribution. Passing this bill will alleviate a large amount of the risk and the loss of thousands of dollars and, will give breweries the same latitude that is allowed to wineries.

Testimony in opposition of **S 1344**: Jan Sylvester was concerned with how it impacts distributors and licenses.

**Jeremy Pisca**, representing the Beer and Wine Distributors Association, worked with **Senator Keough** to craft a piece of legislation that was neutral to distributors. They are very protective of the three tier system currently in place but didn't see that there would be any collateral damage to allow this one exception. **Mr. Pisca** was not testifying in support of or opposition to the bill.

**Senator Stennett** asked how many micro brewers produce 30,000 barrels annually. **Senator Keough** indicated that twenty-four brewers in Idaho fall under micro brewery laws; four more are scheduled to open. **Senator Stennett** asked if this bill was passed, would breweries only be able to expand by purchasing another brewery beyond the one time? **Senator Keough** wanted to clarify that **Mr. Colby** is contemplating partnership, not ownership, with the new brewery, but he would not be allowed to go beyond that limit.

**MOTION:** **Vice Chairman Fulcher** moved, seconded by **Senator Malepeai**, to send **S 1344** to the floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Senator Keough** will sponsor the bill on the Senate floor.

TO THE PRESIDENT OF THE UNITED STATES AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES to request that the US Department of Health & Human Services (HHS) reject and reverse regulation regarding new "prevention services."

**Senator Nuxoll** provided some background history leading up to this piece of legislation:

- Kathleen Sebelius, U.S. Department of Health and Human Services (HHS), reaffirmed a rule passed by the federal government last August that included a list of preventive and sterilization services that all health care brands must cover.
- This rule will become effective August 1, 2012.
- Nonprofit, religious employers that do not now provide the coverage and are not exempt under the narrow definition of a religious employer, will be given one year to comply.
- President Obama has issued a compromise where insurance companies would be forced to offer the preventive services without a copay. Employers will still underwrite the same policies only with services offered by different means resulting in higher premiums.

**Senator Nuxoll** testified that this is the greatest attack on our rights since Roe v. Wade in 1973. It is an attack on our right to religious freedom, freedom of conscience, and access to health care. This HHS ruling violates our rights of conscience, which is held so dear to the American people, as testified by our founding fathers. This is not a contraception issue, this is a conscience issue.

Most states and religious organizations are taking a stand recognizing it is an assault on the broader principle of religious freedom. As an example of the economic and social consequences, hundreds of hospitals may be forced to close. One in six patients receives care in 637 catholic hospitals throughout the states. The Catholic Church educates 2.6 million students every day at a cost of \$10.0 billion and a savings to the American taxpayer of \$18.0 billion. There are 230 Catholic colleges and universities that educate more than 900,000 students annually. The ultimate consequence could be the closing of schools, hospitals and ultimately churches.

The Attorney General has issued an opinion expressing strong opposition to the HHS mandate and will vigorously oppose it in court, joining Attorneys General in Maine, Florida, Louisiana, North Dakota, Ohio, Oklahoma, South Dakota and Colorado. This is an American issue not a Catholic issue. Freedom of conscience belongs not just to religious people, but to all Americans.

**Senator Stennett** noted that in the statement of purpose, the concern is that prevention services may violate the rights of conscience for a majority of US Citizens. Are prevention services currently part of a requirement for insurance that is offered? **Senator Nuxoll** indicated that people now pay for insurance that is being provided.

**Senator Stennett** said that the sponsor spoke of the right of conscience of the majority of U.S. citizens; what would be the guidelines that majority would require to craft something that would protect what the sponsor would consider an invasion on conscience, and how would it be defined? **Senator Nuxoll** stated that it is a violation of the First Amendment to the Constitution, which guarantees the right to religious freedom and the right of conscience.

**MOTION:** **Vice Chairman Fulcher** moved, seconded by **Senator Hill**, to send **RS21273C1** to print.

**VOTE:** The motion carried by voice vote.

**RS21323C1** RELATING TO THE MEDICAL CONSENT AND NATURAL DEATH ACT to protect patients from the involuntary denial of food and fluids, and from life-preserving medical treatment when denial is based on disability, age, or terminal illness.

**Senator Nuxoll** based her discussion on patients' need to be protected from involuntary denial of food and fluids and life preserving medical treatment when that denial is based on disability, age or terminal illness. Patients and their families, not others, should be able to decide whether their lives are worth preserving with life saving medical treatment, foods and fluids, and that no one should be able to impose death against a patient's will because of age or disability.

Twenty-seven court cases have arisen from conflicts between parents and family members over this issue. This antidiscrimination bill does not stop health care providers from declining to give medical treatment that is medically inappropriate or futile. It simply assures that treatment, which in reasonable medical judgment could preserve the patient's life, cannot be termed medically inappropriate or futile just because of the patient's age, disability or terminal illness. Loopholes exist in current law.

Three conditions must be met to be protected from denial of medical treatment. The patient or surrogate must want treatment, the treatment has to be medical treatment that, in reasonable medical judgment, will preserve the life of the patient (this protects the doctor), and the reason treatment is being denied is based upon the doctors belief that extending the life of a patient that is elderly, disabled or terminally ill is of less value than extending the life of a patient who is younger, non-disabled or not terminally ill (this protects the patient). In order to receive food and fluids, only the first two conditions are required.

**Senator Nuxoll** noted that those in favor of the bill are: Right to Life of Idaho and Cornerstone Institute. End of Life is opposed to the bill.

**MOTION:** **Senator Winder** moved, seconded by **Vice Chairman Fulcher**, to send **RS21323C1** to print.

**Senator Stennett** asked if there were statistics about how often these treatments are denied against the patient's wishes and questioned if the purposeful lack of providing certain treatments would result in health care facilities murdering the patients. **Senator Nuxoll** indicated that there are court cases currently dealing with this, and that she has spoken to many nurses who have had patients die from over medication that was administered against their or their surrogate's wishes.

**Senator Stennett** asked if the discrimination based on disability, age or terminal illness, has happened to patients with the full ability for reasoning and mental capacity and the ability to determine their own care but they do not have directives or living wills to indicate their choices. Also, when health care systems or facilities are not adhering to a person's living will or directives, who would have authority to override a person's wishes if they have those documents in place. **Senator Nuxoll** stated that usually, they have a living will or other advance directive to guide them on this issue. The problem comes from the interpretation of some of the wordings, such as "good faith" and "inappropriate or futile" instead of objective medical judgement. There is

value of life concerns based on the person's disability or age, which may be misinterpreted by the provider.

**Senator Stennett** asked who and how this would be policed. **Senator Nuxoll** stated that this makes the law clearer. Also, outlining one's wishes in a living will and advanced directives would eliminate the doctor's judgement of the value or quality of life.

**Senator Davis** asked for an explanation on page three of the bill. What would be the legal effect of the language being added to sub part two? **Senator McKenzie** said that section refers to the provision of needs that are not extraordinary that if taken away, would result in the death of a person, such as assisted feeding, nutrition and hydration. Those things cannot be denied if, in reasonable medical judgment, the result hastens death. The point is to clarify that those decisions would be made by either the patient or the person(s) with the authority to make decisions on behalf of the patient.

**VOTE:**

**RS21297**

The motion carried by voice vote.

STATING FINDINGS OF THE LEGISLATURE authorizing the Department of Parks and Recreation to enter into agreements with the Idaho State Building Authority to pay all bonds issued for the Vardis Fisher property and others in the Hagerman Valley in order to concentrate limited resources to enhance recreational opportunities in the Hagerman Valley. **Senator Winder** asked **Nancy Merrill**, Director of Parks and Recreation, to present the **RS21297**

**Director Merrill**, explained that a piece of property near Billingsley Creek in Hagerman Valley was purchased in 2001 with bonds through the Idaho State Building Fund. The property was bought for the purpose of aquaculture in partnership with the University of Idaho (U of I) to be used for a fish hatchery and habitat. The U of I has pulled out of that partnership and it remains as a fish hatchery in its present use. The Idaho Department of Parks and Recreation is looking at pieces of property to consolidate, transfer and trade; this is one of those properties. It will enable the Department to move recreational opportunities to another location and to find a better use for this property. It could be possible to reissue the bonds at a lower rate, move those bonds to a piece of property that the Department will hold title to, and the bonds will be paid off in a shorter period of time, saving the state about \$600,000 a year.

**Senator Davis** asked if the limited recreational benefit of the Vardis Fisher property was the reason Parks and Recreation wanted to dispose of it and is the intention to sell or trade that property for other property. **Director Merrill** concurred. **Senator Davis** asked if it was best to have the property unencumbered by outstanding bonds when trying to sell or trade and, in the refinancing, would the Department encumber other property to service the outstanding debt. **Director Merrill** indicated that was the case. Existing property, i.e., the Department headquarters, that has building and land value similar to the Vardis Fisher piece would be the collateral for the bonds. The dollars coming from the sale would go to existing property or go into the maintenance and operation fund. It will not be used to purchase new properties.

**Senator Davis** asked if the Department is unable to trade the property for a more appropriate alternative property and it is sold, what happens to that money? **Director Merrill** deferred to the Department's attorney, **Steven Stratt**, Deputy Attorney General, stated that the money could not be used to pay off the bonds, because the property is presently only worth \$2.7 million. The outstanding value on the bonds is over \$4 million. The bonds could be paid down but they would have to be refinanced before that could happen. The Building Authority wants to refinance because it can lead to a lower rate without surety bonds, saving the state over \$600,000 over the next ten years. In terms of the money, it is Legislative prerogative.

**Senator Davis** referred to line two of page two, regarding transfer of title to Parks and Recreation; who currently holds title to the property? **Mr. Stratt** indicated the Building Authority holds the title to the property. It is leased to Parks and Recreation through a facilities lease so the bond payment is the lease payment. **Senator Davis** followed up. The Building Authority holds the title. Once the bonds are satisfied, the title will be transferred to the Department. Sideboards are in the Concurrent Resolution as to what Parks and Recreation can do in the event the property sells. **Mr. Stratt** indicated that there were not any sideboards at this point. **Senator Davis** asked if the Building Authority currently owns the property that would effectively become the property that holds the lien after the bonds are refinanced. If so, would the lease holding interest be collateralized through the bonds. **Mr. Stratt** stated that Parks and Recreation, which owns the property, will lease the headquarters building to the Building Authority for \$1 a year, and the Building Authority will lease back the headquarters to the Department for the bond payment. It is not necessary to hold the title to the property to secure the bonds; they just need a secure enough interest that if the lease payments are not made they can foreclose on it.

**MOTION:**

**Senator Winder** moved, seconded by **Vice Chairman Fulcher**, to send **RS21297** to print and request that it be returned to committee.

**VOTE:**

The motion carried by voice vote.

**RS21319C2**

RELATING TO ABORTION to require the use of an ultrasound prior to an abortion and to provide an additional resource where pregnant mothers can obtain an ultrasound free of charge. When enacted, this legislation will codify the standard use of an ultrasound and referrals as described.

**Julie Lynde**, Executive Director, Cornerstone Family Council, introduced **Kerry Uhlenkott**, Legislative Coordinator, Right to Life of Idaho, to present **RS21319C2**.

**Ms. Uhlenkott** has been working with House and Senate legislators, including **Senator Nuxoll** and **Representative McGeachin**. **RS21319C2** would require an ultrasound to be performed on a pregnant mother prior to the performance of an abortion. Under an existing 2007 law, the mother is already offered the opportunity to view an ultrasound of her unborn child as part of an informed consent statute. Ultrasound is a key element of informed consent, it should be required before an abortion is performed. This legislation also provides that the pregnant woman be given a listing of places that offer free ultrasounds. Page 3, 18-609 section 5, is the heart of the bill requiring an ultrasound be performed on a pregnant woman prior to the performance of an abortion by whichever method the abortion provider and pregnant woman decide upon. Ultrasound is a common and useful diagnostic tool, useful in verifying and dating pregnancy, as well as assessing gestational age, size and growth of the unborn child. Under current Idaho law, the Department of Health and Welfare (DHW) already provides a list of other resources to pregnant women. Page

3, lines 19-46, requires the physician performing the abortion or his agent, to sign and date a statement indicating the time the ultrasound was performed, initialed and signed by the patient. Information is power to women to make true informed decisions. The ultrasound bill will make scientifically accurate information available to the mother that will enable her to make an informed consent decision.

**Senator Stennett** asked if requiring an invasive procedure, which could possibly be against a person's wishes, as part of a medical process is a contradiction to a bill heard earlier in this meeting. **Senator Nuxoll** stated that ultrasound is part of informed consent. Women have suffered psychologically by not having had the information. She further indicated that this legislation doesn't require invasive procedures; it only requires an ultrasound, the method of which can be determined by the doctor and patient, whichever type is appropriate.

**Senator Stennett** stated that ultrasound procedures are currently available and asked if making it a requirement would make things safer. **Senator Nuxoll** stated that this legislation protects informed consent and insures the appropriate ultrasound is used to determine and date the pregnancy.

**MOTION:** **Senator Davis** moved, seconded by **Senator Hill**, to print **RS21319C2**.

**VOTE:** The motion carried by voice vote.

**RS21102** **Senator Winder** presented a letter from **Senator Hammond** requesting unanimous consent to print the **RS21102** and refer it to the Senate Transportation Committee.

**MOTION:** **Senator Davis** moved to print **RS21102**, seconded by **Vice Chairman Fulcher**.

**VOTE:** The motion carried by voice vote.

**RS20990C2 and RS21372** **Chairman McKenzie** noted the RS's had further changes that had not yet been made and asked that they be pulled back and held until the next Committee meeting. There were no objections.

**VOTE ON GUBERNATORIAL APPOINTMENT:** **Senator Lodge** moved to approve the appointment of **James C. Hammond** to the State Building Authority, seconded by **Senator Stennett**.

**VOTE:** The motion carried by voice vote.

**MINUTES:** **Senator Hill** moved, seconded by **Senator Stennett**, to approve the minutes of February 1, 2012. The motion carried by voice vote.

**Senator Winder** moved, seconded by **Senator Malepeai**, to approve the minutes of February 10, 2012. The motion carried by voice vote.

**Senator Davis** noted that there were corrections to the minutes from February 13, and asked they be deferred to the next Committee meeting.

**ADJOURNMENT:** **Chairman McKenzie** adjourned the meeting at 9:35 a.m..

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

**AMENDED AGENDA #1**  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Room WW55**  
**Wednesday, February 29, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS21352</u></a>	STATING THE FINDINGS OF THE LEGISLATURE and encouraging Governor C. L. "Butch" Otter in his efforts to move forward with the Governor's Sage Grouse Task Force.	Senator Brackett
<a href="#"><u>RS21320</u></a>	RELATING TO UNCLAIMED PROPERTY AND THE PUBLIC RECORDS ACT restates existing protections related to personal information to alleviate the concerns of businesses and individuals participating in the program.	Ron Crane, Treasurer
<a href="#"><u>RS21064C4</u></a>	RELATING TO UNCLAIMED PROPERTY to provide a method for a claimant to donate property, proceeds, interest, and other types of proceeds to a public purpose.	Ron Crane, Treasurer and Cozette Walters
<a href="#"><u>RS21373</u></a>	A JOINT MEMORIAL TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES calling on Congress to reclaim its Constitutional role over the management of species and public lands and reexamine, reform and reauthorize any federal law the disrespects the role of states and local governments in land management decisions.	Senator Lodge
<a href="#"><u>RS21369</u></a>	RELATING TO ADMINISTRATIVE RULES to strengthen support of negotiated rulemaking by clarifying its purposes and providing procedures to enhance public notice and participation.	Roger Batt
<a href="#"><u>RS21243C1</u></a>	RELATING TO THE PUBLIC UTILITIES COMMISSION in the case of ownership of RECs.	Rich Hahn
<a href="#"><u>RS20990C4</u></a>	RELATED TO AMENDMENTS TO THE UNITED STATES CONSTITUTION by the addition of a new <i>Chapter 93, Title 67, Idaho Code</i> related to a constitutional convention.	Senator McKenzie
<a href="#"><u>RS21372C1</u></a>	STATING FINDINGS OF THE LEGISLATURE AND MAKING APPLICATION TO THE CONGRESS OF THE UNITED STATES to call for an Article V Convention to consider specific amendments to the United States Constitution.	Senator McKenzie
MINUTES:		
	February 13, 2012	Senators Fulcher and Davis
	February 15, 2012	Senators Winder and Malepeai

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie

Vice Chairman Fulcher

Sen Davis

Sen Hill

Sen Winder

Sen Lodge

Sen Malepeai

Sen Stennett

COMMITTEE SECRETARY

Twyla Melton

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, February 29, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators Darrington, Davis, Hill, Winder, Lodge, Malepeai, and Stennett

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** convened the meeting at 8:00 a.m.

**RS21352** STATING THE FINDINGS OF THE LEGISLATURE and encouraging Governor C. L. "Butch" Otter in his efforts to move forward with the Governor's Sage Grouse Task Force.

**Senator Brackett** stated **RS21352** supports and encourages Governor Otter to move forward with the Governor's Task Force to create an Idaho Sage Grouse Plan (Plan). A recent court decision required the U.S. Fish and Wildlife Service to make a listing determination for sage grouse by September 30, 2015 under the Endangered Species Act. The Governor understands the potential devastating impact to the Idaho economy and lifestyle if that specie is listed. The sage grouse is the spotted owl of the sage brush step that includes all of southern and central Idaho. The Governor desires to develop a management plan that would exempt the state from compliance with the Bureau of Land Management's (BLM) instruction memorandum. The goal of the Plan is to keep that specie off the list but, if it is listed, to minimize the impact on committed lawful activities on the public lands such as grazing, hunting, recreation, energy and all other existing uses that are at risk. The BLM and Forest Service are writing an Environmental Impact Statement (EIS) that will be the basis for their determination. The Governor hopes this plan would be the preferred alternative by the BLM.

**MOTION:** **Senator Hill** moved, seconded by **Senator Winder**, to send **RS21352** to print.

**VOTE:** The motion carried by voice vote.

**RS21369** RELATING TO ADMINISTRATIVE RULES to strengthen support of negotiated rulemaking by clarifying its purposes and providing procedures to enhance public notice and participation.

**Roger Batt**, representing the Idaho Heartland Coalition, explained that this bill strengthens the negotiated rulemaking process and allows for better transparency of public notice participation and the sharing of information throughout the negotiated rulemaking process. This will result in better consistencies throughout the process between the agencies and industry and will also result in better understandings of the information gathered and debated by those that are engaged in the process. **Mr. Batt** personally met with the different state agencies throughout these drafts to get to this RS. The drafters of this legislation was: The Bureau of Occupational Licensing, Department of Environmental Quality, Department of Agriculture, Alcohol and Beverage Control, Idaho Transportation Department, Department of Water Resources, Department of Administration and the Department of Health & Welfare. **RS21369** is the result of negotiations between all parties. The current legislation allows the agency the discretion of making written comments

available by any means that they feel necessary to those participating in the negotiated rulemaking.

**Senator Hill** asked if the emergency clause will put any hardship on any of the agencies. **Mr. Batt** replied that the clause was placed in the legislation because many of the agencies will start the process of negotiated rulemaking directly after the legislative session ends. This should not put a hardship on agencies conducting rulemaking as long as they know what steps to follow.

**MOTION:** **Senator Winder** moved, seconded by **Senator Malepeai**, to send **RS21369** to print.

**VOTE:** The motion carried by voice vote.

**RS21243C1** RELATING TO THE PUBLIC UTILITIES COMMISSION in the case of ownership of RECs.

**Rich Hahn**, representing Idaho Power, offered introductory comments for **RS21243C1** noting that this RS is also supported by Avista Corporation and Rocky Mountain Power. The Public Utility Regulatory Policies Act (PURPA) of 1978 obligates all electric utilities to purchase the power generated by a qualified facility if they are asked to contract with that facility. Utilities such as Idaho Power have no choice when it comes to PURPA projects; they must purchase that energy. Utility customers pay 100% of the cost associated with these mandatory power purchases. This legislation provides that renewable environmental attributes (RECs) associated with the generation of electricity from PURPA qualifying facilities that sell their power to public utilities in the State of Idaho are owned by the Public Utility Purchaser of the power for the benefit of the public utilities customers. Currently there is ambiguity into which party, the public utility or the PURPA developer, owns the RECs generated by the PURPA project. This legislation would resolve that ambiguity by assuring that the customers that are paying for the PURPA energy also receive the full benefits of that energy including the environmental attributes. This RS applies only to qualified facility power purchase agreements entered into by public utilities following the enactment of this legislation. This RS is good for Idaho utility customers.

**MOTION:** **Senator Winder** moved, seconded by **Senator Hill**, to send **RS21243C1** to print.

**VOTE:** The motion carried by voice vote.

**RS21064C4** RELATING TO UNCLAIMED PROPERTY to provide a method for a claimant to donate property, interest, and other types of proceeds to a public purpose.

**Cozette Walters**, Administrator, Unclaimed Property, explained that **RS21064C4** offers any claimant an opportunity to donate any unclaimed property that they have decided they are not interested in claiming to a cross-section of public interest purposes and can be an easy electronic fund transfer within the state treasury. There are four areas the department believes would be good candidates for the funds: 1) The Public School Permanent Endowment Fund; 2) The Veterans Cemetery Maintenance Fund; 3) Parks and Recreation Capital Improvement Account; and 4) The State General Fund.

**Senator Stennett** asked for a description of how the program operates? **Ms. Walters** outlined three steps:

- 1) They advertise citizens names in newspapers.
- 2) The abandoned property goes to processors who prove that this is the right owner.
- 3) They either make out a check to the claimant or the claimant may ask that the monies be donated.

**Senator Davis** questioned the cost to the State to issue a check. **Ms. Walters** stated they had done an analysis while at the Tax Commission and the amount to issue one check from beginning to end was \$46.00. **Senator Davis** produced a copy of a two cent check from a constituent and asked for an explanation. **Ms. Walters** explained that if the claimant files a claim and requests the proceeds, they are required to send it out no matter how large or small the amount. They currently do not have the authority to hold the check. **Senator Davis** suggested that consideration should be given to the processes that are in place to make sure that this is correct procedure. **Mr. Crane** stated that **Senator Davis** makes a very good point and their Department would be more than willing to work towards developing a process that eliminates waste.

**MOTION:** **Senator Winder** moved, seconded by **Vice Chairman Fulcher**, to send **RS21064C4** to print.

**VOTE:** The motion carried by voice vote.

**RS21320** RELATING TO THE UNCLAIMED PROPERTY AND THE PUBLIC RECORDS ACT to restate existing protections related to personal information to alleviate the concerns of businesses and individuals participating in the program.

**Ron Crane**, Treasurer, State Treasurer's Office, explained that a couple of years ago this Committee moved the Unclaimed Property Division from the State Tax Commission to the State Treasurers Office. Under the existing codes the State Tax Commission enjoys exemption from the open records law. When that department moved to the Treasurer's Office, that exemption did not move with it. **RS21320** applies the same exemption allowed to the Tax Commission to be put in place for the Unclaimed Property Division which handles bank account numbers, private addresses, phone numbers, social security numbers, date of birth, etc. If this information could be accessed, there could be problems with identity theft or certain unscrupulous business practices.

**Senator Davis** asked if there was a reason why an emergency clause was not added to the legislation. **Julie Weaver**, Deputy Attorney General, replied that they did not think an emergency clause was necessary.

**MOTION:** **Senator Lodge** moved, seconded by **Senator Stennett**, to send **RS21320** to print.

**VOTE:** The motion carried by voice vote.

**RS21373** A JOINT MEMORIAL TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES calling on Congress to reclaim its Constitutional role over the management of species and public lands and reexamine, reform, and reauthorize any federal law that disrespects the role of states and local governments in land management decisions.

**Senator Lodge** explained that this bill is brought to our Committee by a large group of legislators, as indicated on the co-sponsor list. They are urging Congress to reexamine, reform and reauthorize the Endangered Species Act, the National Environment Policy Act, the Equal Access to Justice Act, and any other federal law that disrespects the role of state and local governments in land management decisions and leads to costly and frivolous lawsuits that strip authority from Congress and place it in the hands of the judiciary.

This Memorial also asks the President of the United States to direct his federal land management agencies to utilize free market principles such as cost-benefit analysis, peer review of the science involved in their decision making process, and respect the concept of multiple use in the management of federal lands. It asks the Congressional Delegation to urge all federal land management agencies to use their discretionary authority to maximize the role and influence of local communities in federal land management decisions.

**Senator Lodge** stated that she lives by a man-made reservoir in Canyon County named Lake Lowell which is part of the Deer Flat Wildlife Refuge area. The Fish and Wildlife Services is threatening to close all recreational activity on the lake which will cause immeasurable recreational and financial harm to the economy of Canyon County. This action is causing an expenditure of countless county taxpayer dollars to defend the citizen's rights to recreate on Lake Lowell. If the State does not defend their rights, then the waters of that Lake will be closed to the citizens.

This Memorial also asks that regulations and constraints for caribou on the hundreds of thousands of acres in Boundary and Bonner Counties be scientifically studied. There is conflicting evidence as to whether those lands need to be closed and further study is needed before that closure.

**Senator Lodge** recognized the efforts of **Representative Derek Anderson** who has been working on this memorial and is currently in Washington D. C. testifying before Congress on this matter.

**MOTION:** **Senator Davis** moved, seconded by **Vice Chairman Fulcher**, to send **RS21373** to print.

**VOTE:** The motion carried by voice vote.

**Chairman McKenzie** relinquished the gavel to **Vice Chairman Fulcher**.

**RS20990C4** RELATED TO AMENDMENTS TO THE UNITED STATES CONSTITUTION by the addition of a new *Chapter 93, Title 67, Idaho code* related to a constitutional convention.

**Chairman McKenzie** stated that this legislation could be the most important legislation the Committee considers during this session or even over the course of his career at the Legislature. This issue deals with Article V of the U.S. Constitution. Last session, the Committee addressed this issue but this bill is a better approach. This has been a joint effort between some national organizations and others in the legislature to fashion a solution to what is a critical national problem related to Federalism. Senator Crapo stated in his address to the Senate that the greatest crisis the Nation is facing currently or has ever faced is the growing national debt. America has faced threats to our country that are external and have come forward as a nation and shown a resolve to deal with those problems. This is an internal problem and the Nation has not shown a resolve to deal with the magnitude of this problem. This is a reflection of problems with our current "federalist system." The federal government has grown in ways that were never anticipated when the Constitution was passed, in particular, their expansion of powers under the "commerce clause." The growing impact of finances on the process of gaining and holding federal office has affected the process. The states have lost significant powers and the federal government has grown and has shown no interest in limiting its spending. This is a crisis.

These two RSs address the crisis and relate to Article V of the Constitution. Currently 2/3 of the states can call for a convention on a subject. Then Congress must call for a convention and that convention is limited in scope by the application from states, it is not a plenary convention. But, the states have never called for a convention because of the fear of a "runaway convention". Last year, this body passed a proposal that was the application to amend Article V to limit the convention to the applications of the states. Currently, the states have authority over their delegates to an Article V convention so the states can control their delegates. The proposal in **RS20990C4** limits the Idaho delegates to an Article V convention. If a constitutional convention was called, Idaho delegates would be limited in two ways: 1) they would take an oath to limit their consideration to issues within Idaho's application for the constitutional convention and, 2) the delegation will not vote to consider or approve any unauthorized amendment. Under the

current Article V, anything coming out of the convention would have to be ratified by three-fourths of the states.

Idaho delegates to an Article V convention which requires them to take an oath before they are certified that they would limit their consideration to issues within Idaho's application for the constitutional convention. They would not consider anything that went beyond that unless the legislature directly authorized them during the periods of convention. They would also advocate at the convention, rules to limit the scope of the convention to the application of the states. Whatever decision that would come out of a convention would have to be ratified by 3/4 of the states.

Idaho would be the first state to take this step. **Chairman McKenzie** would recommend this action to other states at the various legislative meetings in the interim.

**Senator Davis** stated that he is concerned that this is an actual exercise and trigger to several states and the belief that the participants can be narrowly defined. He also fears that enforceability of those provisions, which would be subject to a federal court interpretation, could strip away the very narrow "sideboards" that are being put in place. He agrees with the principles but is concerned.

**Chairman McKenzie** responded that **Senator Davis** had a valid concern. There are two parts of the process. 1) the Concurrent Resolution is the application; and, 2) the RS for the statutory changes would be the code section limiting the delegates. The research that has been done is clear that the state has authority to control its delegates. This is an uncharted action intended to address the constitutional crisis in the way U.S. Congress is operating and despite the best efforts of Senator's on both sides of the aisle such as the "gang of six," to try and craft reasonable and measured means to control federal. Congress is not doing it.

**Senator Davis** said if the Committee decides to print the concurrent resolution rather than to go into the 10th order of business, it is his understanding that the bill is to come back to the Committee. **Chairman McKenzie** stated that the concurrent resolution will come back to the Committee.

**Senator Stennett** voiced similar concerns as **Senator Davis** in that if the legislature passes this legislation and the delegates are sent off to the convention where other states don't have this provision, what would you envision their effectiveness to be in conjunction with those other states who do not hold their delegates to the same standards. **Chairman McKenzie** said that is the same fear every state has and that is why states have never called for a convention. There is a pent up desire to do something in this regard among several states; other states will follow Idaho's example and pass their own legislation. If the convention decides to try to rewrite the constitution or go beyond what is in the applications it would have to be ratified by 3/4 of the states which is significant.

**Senator Davis** explained that it might be safer to ask Congress to exercise its power within very narrow parameters and also write a statute that states they would have these narrow boundaries of what they can do. **Chairman McKenzie** replied that we need to get at the heart of the matter. If Idaho calls for a convention, it would be for the purpose of returning a balance of power. He reiterated the controls set forth within the RS. **Senator Davis** said it is politically troubling to trust that Congress will do what the state delegations pass into law or that the federal courts will interpret that we have the power with these boundaries. This year, he has been working with **Representative Lynn Luker**, House State Affairs, to craft the language. The bill has two issues; the delegates and making the application. The one to weigh heavily is the concurrent resolution which is the actual application to Congress to call for a convention with specific topics.

**MOTION:** **Senator Hill** moved, seconded by **Senator Lodge**, to send **RS20990C4** to print with a request to return it to the Senate State Affairs Committee.

**VOTE:** The motion carried by voice vote.

**RS21372C1** STATING FINDINGS OF THE LEGISLATURE AND MAKING APPLICATION TO THE CONGRESS OF THE UNITED STATES to call for an Article V Convention to consider specific amendments to the United States Constitution.

**Chairman McKenzie** stated that this is a concurrent resolution to make application to Congress to call for a convention. If two thirds of the states make the call then Congress has a limited roll to call for the convention. Seven topics are listed in this RS reflecting items listed on past applications. The language would only become part of the constitution if three-fourths of the states ratified the language. This would call for the convention and would be limited to these seven topics.

**MOTION:** **Senator Winder** moved, seconded by **Senator Hill**, to send **RS21372C1** to print with a request to return it to the Senate State Affairs Committee.

**VOTE:** The motion carried by voice vote.

**Vice Chairman Fulcher** turned the gavel and meeting back over to **Chairman McKenzie**.

**MINUTES:**

**MOTION:** **Senator Davis** moved, seconded by **Vice Chairman Fulcher**, to approve the minutes of February 13, 2012.

**VOTE:** The motion carried by voice vote.

**MOTION:** **Senator Malepeai** moved, seconded by **Senator Winder**, to approve the minutes of February 15, 2012.

**VOTE:** The motion carried by voice vote.

**ADJOURNMENT:** There being no further business, the meeting adjourned at 8:58 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

**AMENDED AGENDA #1**  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Room WW55**  
**Friday, March 02, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS21406</u></a>	RELATING TO PRIMARY ELECTION BALLOTS to combine candidates and issues on the ballots in a Primary Election.	Tim Hurst, Chief Deputy, Secretary of State
<a href="#"><u>RS21354</u></a>	RELATING TO HORSE RACING to clarify that "Historical Horse Racing" is lawful when utilized by certain entities.	Stan Boyd, Treasure Valley Racing
<a href="#"><u>RS21450</u></a>	RELATING TO LABOR to add a new section to provide legislative intent and to provide for the "Open Access to Work Act".	Senator Pearce
<a href="#"><u>S 1336</u></a>	RELATING TO WORKER'S COMPENSATION that shall be paid for disability or death resulting from certain firefighter occupational diseases.	Mike Walker, Professional Fire Fighters of Idaho
<a href="#"><u>RS21424</u></a>	STATING LEGISLATIVE FINDINGS instructing the Interim Committee on Energy, Environment and Technology to study the effects of wind farms in Idaho.	Senator McKenzie
<a href="#"><u>RS21355</u></a>	UNANIMOUS CONSENT FROM SENATE TRANSPORTATION COMMITTEE to send RS21355 amending Sections 67-2805 and 67-2806, Idaho Code, to provide the same exemption from disclosure of bids and bid documents until after awarded as provided in Section 67-5711C, Idaho Code.	Senator Winder

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Vice Chairman Fulcher  
Sen Davis  
Sen Hill

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

Twyla Melton  
Room: WW42  
Phone: (208) 332-1326  
email: [tmelton@senate.idaho.gov](mailto:tmelton@senate.idaho.gov)

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, March 02, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Vice Chairman Fulcher, Senators, Davis, Hill, Winder, Lodge, Malepeai, and Stennett

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:00 a.m.

**RS21406** RELATING TO PRIMARY ELECTION BALLOTS to combine candidates and issues on the ballots in a Primary Election. **Tim Hurst, Chief Deputy, Secretary of State**, stated last year when the legislation was passed to create the closed primary there was concern that the language in *Section 34-904, Idaho Code*, which states that each ballot and each party would have their own separate ballot will eliminate the need for voters to receive two separate ballots in most instances. If they remove the word "only" in this bill it will allow their County Clerk to just give the poll one ballot. **Senator Davis** asked **Mr. Hurst** what is the turnaround time they are expecting on this legislation to accommodate the County Clerks calendar? **Mr. Hurst** replied that if it is finished by Friday, March 9, 2012, it would allow for the forty-five day lead for absentee ballots.

**Chairman McKenzie** responded that he had no preference between the bill coming back to Committee or going directly to the floor.

**MOTION:** **Vice Chairman Fulcher** moved, seconded by **Senator Lodge**, to print **RS21406** and once printed send the newly printed bill to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote.

**RS21354** RELATING TO HORSE RACING to clarify that "Historical Horse Racing" is lawful when utilized by certain entities. **Stan Boyd, Treasure Valley Racing**, explained Treasure Valley Racing is the local company that owns Les Bois Park. Five local investors stepped forward to reopen the facility after three years of closure. This legislation will authorize "historical horse racing" in the State of Idaho. Pari-mutuel wagering, in the State of Idaho, has been lawful since 1961. As technology advances and it brings forth the different forms of pari-mutuel wagering we assumed that it was legal but decided to ask for the Attorney General's opinion. The determination was that a video screen is legal in the State of Idaho and they suggested that legislation be crafted for historical racing.

Historical racing is a past horse race. There is a bank of some 60,000 past horse races. They are brought up on the screen at random without revealing the name of the racetrack, the name of the horses, or the date it was run until the end. It gives the odds of the horses and how many races the horses won in the past so the patron can make an educated guess. It has proved quite successful in Oklahoma and Arkansas. It could be a real boost for the live horse race industry here in the State of Idaho. Les Bois park employs 176 people, both part-time and full time. Last year it ran 15 race days, this year they have applied for 36 days. The estimated economic impact to the Treasure Valley for this coming year is \$29.3M.



**MOTION:** **Senator Winder** moved, seconded by **Vice Chairman Fulcher**, to print **RS21354**.

**VOTE:** The motion carried by voice vote.

**RS21450C1** RELATING TO LABOR to add a new section to provide legislative intent and to provide for the "Open Access to Work Act". **Senator Pearce** stated **RS21450C1** is before you today to replace S1342, the 2012 version of the Open Access to Work Act that this Committee passed in the last session. Judge Winmill overturned last year's legislation on somewhat specious grounds. This legislation is to address the issues raised by Judge Winmill and protect the Idaho Taxpayer from project labor agreements that are "union only", which drive up prices of government construction projects as they limit competition.

The intent of the bill would be to have Idaho governmental entities, such as state or counties, that contract for construction acting as a "market participant", (a purchaser of construction). The state would not be in a position of acting in a way that could be construed as controlling a labor activity that the Judge thought of as "protected" under the National Labor Relations Act.

The bill addresses the concerns of the Court, meets the goals of the merit shop companies and workers, and does not violate any activities that are protected under the National Labor Relations Act. The Attorney General's opinion is included as part of these minutes.

**MOTION:** **Senator Winder** moved, seconded by **Senator Hill**, to print **RS21450C1**.

**VOTE:** The motion carried by voice vote.

**S1336** RELATING TO WORKER'S COMPENSATION that shall be paid for disability or death resulting from certain firefighter occupational diseases. **Mike Walker, Executive Vice President, Professional Fire Fighters of Idaho**, provided some of his background. Since the beginning of his career 17 years ago he has made training and ongoing education regarding his profession a priority. Over the course of this study, he has become increasingly aware of the toll fire fighting takes on the human body with such diseases as heart, lung and certain types of cancers related to the profession. Workers compensation protects fire fighters if they are injured in the line of duty, but not if they contract one of the cancers as a result of their job. Chronic exposure over the course of a firefighter's career can result in susceptibility to certain forms of cancers. The workers compensation system does not protect fire fighters in these occupational disease cases. The legislation before you will give fire fighters a chance to have coverage for these diseases, but not an overwhelming advantage.

When a firefighter develops one of these specific cancers the system would look at the qualifying factors set out in this legislation. If the employer can show medical evidence that it was caused by something other than the job, the claim would be denied. There would be a minimal adjustment to the workers compensation premium, between 2.3% to 7.8%. The increase to individual fire departments to cover this adjustment using the 7.8% figure would be a 0.1% to a 0.44% increase to their overall budget.

This legislation is simply about making the workers compensation system work in the cases of occupational diseases to give fire fighters a chance to be taken care of as a result of a job related illness. Right now the door is all but closed for these claimants.

**Dr. Virginia Weaver, Physician, Associate Professor of Occupational Medicine at John Hopkins University**, stated she was present to testify at the request of the International Association of fire fighters on behalf of the Professional fire fighters of Idaho. She stated a disclaimer that her testimony does not necessarily reflect the view of the John Hopkins University.

**Dr. Weaver** presented three related topics on the medical science behind the increased risk of cancer in fire fighters.

- 1) The wide range of carcinogens, cancer causing chemicals, that are present in the smoke that fire fighters regularly encounter.
- 2) The increased risk for various cancers that fire fighters experience as a result of their occupational exposures.
- 3) Complexity of workers compensation for occupational cancer.

1): Occupational exposures: fire fighters, in their line of duty, still enter the uncontrolled hazardous environment and studies show that the chemicals contained within the smoke that fire fighters commonly encounter during their fire suppression and overall activities has been fully documented as a reason for concern for cancer resulting from these exposures.

2) Cancer risks: A number of studies have been conducted to measure the risk of exposure to fire fighters in their duties. A research technique to look at this is called a metanalysis where you take lots of smaller studies and put them together so that you are better able to tell if there is a true increased risk. By combining 32 smaller studies they were able to show that for the 20 different cancers they looked at 10 were significantly increased in fire fighters and the other 10 did not reach significance, but they were increased as well. It is likely that the numbers underestimate the true risk.

**Senator Davis** asked if this methodology of analyzing the data is an accepted source of evidence. **Dr. Weaver** stated that this analysis is the standard state of the art approach. Exposure assessment is a challenge due to its complexity. If you misclassify fire fighters, high risk fire fighters end up in a low or no risk group which underestimates risk. Fire fighting is tough work and young, strong, healthy recruits enter the fire service. They have to stay physically fit in order to do the work. In addition, fire fighters are a small work force. It is very hard to evaluate the damage to find the increased risk. Overall, the research is stacked against finding an increased risk of cancer in fire fighters.

3) Impact for Fire Fighters: It is incredibly difficult for occupational cancer to be verified because the occupational exposures are from years before the cancers appear. There are not many physicians with the knowledge to be able to weigh the risk factors. There are not many lawyers that can help in the workers compensation system. A firefighter who has cancer is getting chemotherapy and then has to prove through the medical and legal system, that this is work related to get some compensation. The cancer treatment costs are ongoing while the burden of qualifying is placed on the claimant.

Reasons against the legislation would be that it is a "slipper slope." If the state makes this adjustment for one occupation they must do it for everyone. Fire fighting is totally different then all other occupations. The majority of states in the U.S. now have presumption cancer legislation.

In summary, air monitoring clearly supports that fire fighters are exposed to carcinogens at high levels in their work. The analysis shows that fire fighters are at increased risk for developing and dying from specific cancers. For the reasons discussed the risks that they see in the research studies is likely to be underestimated and they know that the burden of the current workers compensation system places an extraordinary burden on individual fire fighters who develop cancer.

**Senator Davis** asked if a firefighter patient has a family history of cancer and exposes themselves to the carcinogens, how have other states navigated with the causation and is it fair to the fire fighters? **Dr. Weaver** replied that, because of the inherent challenges and the physical demands of fire fighting, they have physicals on a more regular basis. These examines are used to ensure that the worker is not placing themselves or coworkers at risk. These physicals document smoking, family history, and can be weighted in when deciding whether or not the occupational risk outweighs the non-occupational risk.

The following individuals testified in support of **S1336**:

**Travis Woolford,**

**Chief Dennis Doan, Boise Fire Department**

**Dick Owen, Practicing Attorney, representing injured workers**

**Dr. Paul Collins**

Questions were addressed to Chief Doan from Committee members regarding workers' compensation rating methodology, cost increases to the districts, and fire fighters that would qualify for coverage, i.e. full time versus part time and volunteers.

**Mr. Walker** closed by stating that the system is stacked workers and occupational disease cases. The hazard exists and fire fighters are sick because of exposures. This bill is a reasonable bill by giving a claimant a fair chance to prove a his/her case before the industrial commission.

**Chairman McKenzie** spoke with **Woody Richards**, representing private insurers, and asked **Mr. Walker**, if they were going to request that the bill go to the amending order. **Mr. Walker** stated that they have a compromise language change and would like to send the bill to the amending order with those recommended changes.

**MOTION:** **Senator Davis** moved, seconded by **Senator Winder**, to send **S1336** to the 14th Order for amendment to revisit the fiscal note with the projected costs to the local governments.

**VOTE:** The motion carried by voice vote.

**RS21424** STATING LEGISLATIVE FINDINGS instructing the Interim Committee on Energy, Environment and Technology to study the effects of wind farms in Idaho.

**MOTION:** **Senator Winder** moved, second by **Senator Lodge**, to print **RS21424**.

**VOTE:** The motion carried by voice vote.

**RS21355** UNANIMOUS CONSENT FROM SENATE TRANSPORTATION COMMITTEE to send RS21355 amending *Sections 67-2805 and 67-2806, Idaho Code*, to provide the same exemption from disclosure of bids and bid documents until after awarded as provided in *Section 67-5711C, Idaho Code*. **Senator Winder** explained this unanimous consent request was given by the Senate Transportation Committee and he requests consideration to print **RS21355**.

**MOTION:** **Vice Chairman Fulcher** moved, second by **Senator Winder**, to print **RS21355**.

**VOTE:** The motion carried by voice vote.

**ADJOURNMENT:** There being no further business, the meeting adjourned at 9:33 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

AGENDA  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Room WW55**  
**Monday, March 05, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS21452</u></a>	UNANIMOUS CONSENT FROM RESOURCES RELATING TO CITY IRRIGATION SYSTEMS to prohibit specified acquisitions through the power of Eminent Domain.	Senator Pearce
<a href="#"><u>RS21454</u></a>	UNANIMOUS CONSENT FROM RESOURCES RELATING TO FLOODPLAIN ZONING ORDINANCES to clarify exemptions from local flood plain regulation without impairing the ability to qualify for the National Flood Insurance Program	Senator Pearce
<a href="#"><u>S1363</u></a>	RELATING TO UNCLAIMED PROPERTY to allow for the donation of any property payable under the Unclaimed Property Act.	Ron Crane, Treasurer
<a href="#"><u>S1365</u></a>	RELATING TO UNCLAIMED PROPERTY to provide that personal information related to unclaimed property is exempt from disclosure.	Ron Crane, Treasurer
<a href="#"><u>HCR 34</u></a>	STATING LEGISLATIVE FINDINGS to adopt the 2012 revised integrated Idaho Energy Plan as adopted pursuant to HCR 4.	Representative Eskridge and Senator McKenzie
<a href="#"><u>RS21414</u></a>	STATING LEGISLATIVE FINDINGS: this concurrent resolution approves agency rules imposing a fee or charge that have been adopted during the last calendar year with certain exceptions.	Dennis Stevenson, Administrative Rules Coordinator
<a href="#"><u>RS21415</u></a>	STATING LEGISLATIVE FINDINGS: this concurrent resolution approves/extends agency temporary rules beyond the current legislative session with certain exceptions.	Dennis Stevenson
<a href="#"><u>S1343</u></a>	RELATING TO THE DIRECTOR OF THE IDAHO STATE POLICE to give the Governor authority to provide security/protection for the Lieutenant Governor and his immediate family as needed.	Senator Davis
<a href="#"><u>S1335</u></a>	RELATING TO THE IDAHO ENERGY RESOURCES AUTHORITY to reduce the amount of surety bonds that officers must execute.	Ron Williams, Williams Bradbury

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie	Sen Winder
Vice Chairman Fulcher	Sen Lodge
Sen Davis	Sen Malepeai
Sen Hill	Sen Stennett

COMMITTEE SECRETARY

Twyla Melton  
Room: WW42  
Phone: (208) 332-1326  
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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, March 05, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Senators Darrington, Davis, Hill, Fulcher, Winder, Lodge, Malepeai, Stennett

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** convened the meeting at 8:00 a.m. with a quorum present. **Senator Pearce** has been detained so **Treasurer Crane** will start with the two Treasurer's bills.

**S 1363** RELATING TO UNCLAIMED PROPERTY to allow for the donation of any property payable under the Unclaimed Property Act.

**Ron Crane**, Treasurer, explained that **S 1363** provides a mechanism for folks who have unclaimed property in the Unclaimed Property Division to donate it to the General Fund or any of the three other charities: The Public School Permanent Endowment Fund, the Veterans Cemetery, or the Parks and Recreation Capital Improvement Account.

**Senator Hill** asked for an explanation of the process involved to donate unclaimed property. **Treasurer Crane** referred that question to **Cozette Walters**, Administrator, Unclaimed Property Division. **Ms. Walters** explained that the process starts with an online claim form which is submitted directly to Unclaimed Property.

**Senator Davis** used a two cent example and stated he wouldn't invest the time it took to fill out the form for a two cent return. Consideration might be given to designing an easier process for smaller amounts than what is required for larger amounts. **Ms. Walters** said the proof of ownership is the responsibility of the person making the claim. They are in the process of streamlining the system.

**MOTION:** **Senator Lodge** moved, seconded by **Senator Winder**, to send **S 1363** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote.

**S 1365** RELATING TO UNCLAIMED PROPERTY to provide that personal information related to unclaimed property is exempt from disclosure.

**Treasurer Crane** described what types of property can be accumulated under the unclaimed property umbrella, how it is accumulated, and how much is accumulated. Currently, there is about \$67.0 million of unclaimed property being held in trust by the state. In 2010 the Unclaimed Property Division was moved from the State Tax Commission to the State Treasurer's Office. The assumption of protection under the open records law was made for the Treasurer's Office but, to ensure the validity of that assumption, this legislation makes clear the exemption is the same for the Treasurer's Office as it was for the Tax Commission.

**MOTION:** **Senator Hill** moved, seconded by **Senator Lodge**, to send **S 1365** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote.

**HCR 34** STATING LEGISLATIVE FINDINGS to adopt the 2012 revised integrated Idaho Energy Plan as adopted pursuant to HCR 4.

**Representative Eskridge** explained that **HCR 34** provides for the acceptance of the First five-year revision of the 2007 Idaho Energy Plan completed by the Environment Energy and Technology Interim Committee in compliance with HCR 13 passed in the 2007 session. In updating the 2007 plan, the Interim Committee worked in partnership with the Idaho Strategic Energy Alliance (ISEA) created by Governor Otter, which is comprised of volunteers from state, local, and federal interest as well as the profit and non profit sector. This group of stakeholders worked together to identify and analyze options, opportunities, and risks associated with advanced energy production technologies, energy efficiencies in conservation, and energy businesses in the state. There was also a substantial public process. The recommendations of the 2012 Energy Plan are based on an assessment of Idaho's strengths and weaknesses. Idaho's existing resource base has resulted in some of the lowest electricity and natural gas rates in the country providing enormous benefit to all Idaho consumers. However, new energy resources are becoming increasingly costly and Idaho's position as an importer of more than eighty percent of it's energy needs, leaves consumers vulnerable to issues outside their control. **Representative Eskridge** highlighted some of the more significant statements in the energy plan as revised and accepted by a majority of the Interim Committee members.

There is a "minority report" that gives attention to recommendations that had considerable support even though they were not accepted by a majority of the committee members.

This common sense approach preserves the advantages Idahoans have enjoyed and positions the state to meet the energy needs of Idaho citizens.

**Representative Eskridge** asks for the support of the committee and its help to formalize this policy for guidance, not mandates, of the legislature to develop energy policy to provide a reliable and lowest possible cost energy resource for Idaho citizens.

**MOTION:** **Senator Fulcher** moved, seconded by **Senator Hill**, to send **HCR 34** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote.

**RS21414** STATING LEGISLATIVE FINDINGS: this concurrent resolution approves agency rules imposing a fee or charge that have been adopted during the last calendar year with certain exceptions.

**Dennis Stevenson**, Administrative Rules Coordinator, Department of Administration, explained that **RS21414** is a concurrent resolution approving all pending fee rules and agency administration rules with the exception of three dockets; two related to the Division of Building Safety; (1) one relating to continuing education requirement rules of the Electrical Board; and (2) one related to public safety license rules of the Plumbing Board. The third was the Bureau of Occupational Licenses for Idaho Driving Business Licensing. All were not consistent with legislative intent.

**Senator Stennett** asked why the exemptions were not consistent with legislative intent. **Mr. Stevenson** indicated that the House Business Committee rejected the Electrical Board rules having to do with the licensing board's review of proper courses by the instructors which would increase the fee by \$100.00. The Plumbing Licensing rule was a fee that was also rejected by the House Business Committee because it was their belief it was not the proper time to impose an increase in fees. The Driving Business Licenses had a licensing fee increase that both House and Senate Committees felt were too high at this time. **Senator Stennett** wanted clarification that these are one time exceptions. **Mr. Stevenson** agreed that was correct, they were one time rejections of those increases.

**MOTION:** **Senator Davis** moved, seconded by **Senator Fulcher**, to send **RS21414** to print.

**VOTE:** The motion carried by voice vote.

**RS21415** STATING LEGISLATIVE FINDINGS: this concurrent resolution approves/extends agency temporary rules beyond the current legislative session with certain exceptions.

**Dennis Stevenson** presented **RS21415** which allows the temporary rules to remain in place with full force and effect until the end of the next legislative session. Two rules were rejected and were excepted out of this concurrent resolution. One dealt with Medicaid based planned benefit rules and the other was the winter recreation parking permit program under the Department of Parks and Recreation.

**MOTION:** **Senator Winder** moved, seconded by **Senator Lodge**, to send **RS21415** to print.

**VOTE:** The motion carried by voice vote.

**S 1343** RELATING TO THE DIRECTOR OF THE IDAHO STATE POLICE to give the Governor authority to provide security/protection for the Lieutenant Governor and his immediate family as needed.

**Senator Davis** explained **S 1343** adds subpart (a) on page three to add language that if the Governor chooses to send the Lieutenant Governor on a trade mission or similar assignment, the Governor has the authority to send a security detail at the Governor's discretion. The department the delegation is working on behalf of, will be responsible for the cost of that security detail.

**Senator Hill** asked about the circumstances for the security detail. Is the legislation restricted to foreign delegations or could other circumstances also require that service and then the Governor would be able to provide security to those delegations? **Senator Davis** indicated that this could be applied to circumstances where it is deemed appropriate.

**Senator Malepeai** referred to the fiscal note where it referred to "other existing budgets." Would that allow the use of executive branch funds as well? **Senator Davis** stated that, it is his understanding, the costs would be born by the Lieutenant Governor's or other executive branch budgets.

**MOTION:** **Senator Darrington** noted that this made sense and moved, seconded by **Senator Winder**, to send **S 1343** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote.

**S 1335** RELATING TO THE IDAHO ENERGY RESOURCES AUTHORITY to reduce the amount of surety bonds that officers must execute.



**Ron Williams**, Idaho Energy Resources Authority (IERA), explained that **S 1335** is a housekeeping measure which brings the requirements for one of the elements of their insurance in line with what Idaho Counties Risk Management Program (ICRMP) offers. It is nearly impossible to get a \$1.0 million surety bond for their directors and officers. ICRMP is the primary source of insurance and loss protection for Idaho local governments, counties, cities and special purpose districts. The IERA qualifies as a special purpose district. This legislation allows IERA to obtain coverage in the amount of \$500,000 through access to the ICRMP market.

**MOTION:** **Senator Winder** moved, seconded by **Senator Stennett**, to send **S 1335** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote.

**RS 21452** UNANIMOUS CONSENT FROM RESOURCES RELATING TO CITY IRRIGATION SYSTEMS to prohibit specified acquisitions through the power of Eminent Domain.

**RS21454** UNANIMOUS CONSENT FROM RESOURCES RELATING TO FLOODPLAIN ZONING ORDINANCES to clarify exemptions from local flood plain regulation without impairing the ability to qualify for the National Flood Insurance Program

In **Senator Pearce's** absence, **Senator Davis** indicated that he understood these RS's were time sensitive and the Resources Committee had requested, by unanimous consent, that they be printed. **Chairman McKenzie** made an inquiry to the Pro Tem. Since these affect the authority of cities, would they go back to the Resources Committee or would they come back to the State Affairs Committee or go to the Local Government and Taxation Committee. He would also have a question to **Senator Pearce** on that issue. **Senator Hill** indicated that it could be discussed with the Chairmen of those committees but, since the unanimous consent request came from Resources and Environment, the Chairman of that committee would most likely want those back. **Senator Winder** indicated they could be printed, and then they could be assigned as necessary.

**MOTION:** **Senator Winder** moved, seconded by **Senator Fulcher**, to send **RS21452** and **RS21454** to print.

**VOTE:** The motion carried by voice vote.

**ADJOURNMENT:** **Chairman McKenzie** announced that the Committee would meet at the regular time on Wednesday. Being no further business, the meeting adjourned at 8:35 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

**AMENDED AGENDA #1**  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Room WW55**  
**Wednesday, March 07, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS21428</u></a>	A SENATE RESOLUTION RECOGNIZING THE ACHIEVEMENT of Ariane Drake and Emily Kladar.	Senator Bilyeu
<a href="#"><u>RS21464</u></a>	RELATING TO THE MAINTENANCE AND REPAIR OF DITCHES, CANALS AND CONDUITS to codify existing law that the owner or operator of such aqueducts is not liable for wasting water or damage to others that is caused by the acts of third parties or acts of God.	Norm Semanko
<a href="#"><u>HCR 036</u></a>	HONORING AND COMMENDING STEVEN R. APPLETON for his professional and personal contributions to the State of Idaho.	Mike Reynoldson, Micron
<a href="#"><u>S 1330</u></a>	RELATING TO AIR NAVIGATION FACILITIES to eliminate language made obsolete by HJR 5.	Senator Toryanski
<a href="#"><u>S 1366</u></a>	RELATING TO ADMINISTRATIVE RULES to strengthen the legislatures statement of support for negotiated rulemaking by clarifying its purposes and providing minimum procedures to enhance public notice and participation.	Roger Batt
<a href="#"><u>H 516</u></a>	RELATING TO THE STATE LIQUOR DIVISION to make housekeeping revisions to eliminate unnecessary language, modernize obsolete terms, and clarify language relating to day-to-day operations.	Jeff Anderson, Director, State Liquor Division
Minutes:	February 17, 2012	Senators Winder and Stennett
	February 22, 2012	Senators Hill and Lodge

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie	Sen. Winder
Sen. Darrington	Sen. Lodge
Sen. Davis	Sen. Malepeai
Sen. Hill	Sen. Stennett
Sen. Fulcher	

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, March 07, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Senators Darrington, Davis, Hill, Fulcher, Winder, Lodge, Malepeai, and Stennett

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Senator McKenzie** called the meeting to order at 8:02 a.m. and invited **Senator Bilyeu** to introduce the first item on the agenda.

**RS21428** A SENATE RESOLUTION RECOGNIZING the Achievement of Ariane Drake and Emily Kladar.

**Senator Bilyeu** explained that the intent of this concurrent resolution is to honor two recipients in Idaho who received the Prudential Spirit of Community Awards. The Prudential Spirit of Community Awards is an awards program recognizing student volunteer service. More than 5,000 student projects were reviewed from across the state. Two recipients were chosen: Ariane Drake of Pocatello and Emily Kladar of Hayden Lake.

**Senator Bilyeu** spoke of Ariane Drake who founded a non-profit organization "Hands for Uganda" that raised \$30,000 to buy land, construct a new building for a school, and pay for student's tuition fees.

The second recipient of the award was Emily Kladar of Hayden Lake, a sixth grader, who, with her sister, created a non-profit charity that raised more than \$60,000 to benefit families of children needing heart surgery in Mexico and the United States.

**MOTION:** **Senator Darrington** moved, seconded by **Senator Fulcher**, to print **RS21428**.

**VOTE:** The motion carried by voice vote.

**RS21464** RELATING TO THE MAINTENANCE AND REPAIR OF DITCHES, CANALS AND CONDUITS to codify existing law that the owner or operator of such aqueducts is not liable for wasting water or damage to others that is caused by the acts of third parties or acts of God.

**Norm Semanko**, General Counsel, Idaho Water Users Association, stated **RS21464** is a rewrite of **H398**. This bill clarifies what the law is in regards to the owner of a ditch or canal. The Idaho Water Users Association is not liable for wasting of water or damage that is caused by third parties or acts of God. This legislation reaffirms the responsibility of water managers to keep canals safe by setting forth the applicable duty of care. Without this legislation it will become more difficult for water managers to have their operations insured. This legislation will help make sure that canals and ditches can continue to deliver water to our farms, fields, subdivision, schools and parks.

**Senator Stennett** asked if the basic purpose of this legislation is to define reasonable care so that the owners can be insured? **Mr. Semanko** stated that

was correct. The more clarity you can have in the statute, the easier it is for the practitioners and judges to make a determination and will make them more insurable.

**MOTION:** **Senator Fulcher** moved, seconded by **Senator Darrington**, to print **RS21464**.

**VOTE:** The motion carried by voice vote.

**HCR 36** HONORING AND COMMENDING STEVEN R. APPLETON for his professional and personal contributions to the State of Idaho.

**Mike Reynoldson**, Micron Government Affairs Manager, stated that this resolution honors the lifetime achievements of Steven R. Appleton and his professional and personal contributions to the State of Idaho. As the CEO of Micron Technology, Mr. Appleton led Micron's global expansion while maintaining the corporate headquarters in Idaho. Mr. Appleton also established the Micron Foundation, which has grown to become Idaho's largest corporate foundation, providing millions of dollars in contributions to K-12 and higher education programs.

**MOTION:** **Senator Fulcher** moved, seconded by **Senator Lodge**, to send **HCR 36** to the floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote.

**S 1330** RELATING TO AIR NAVIGATION FACILITIES to eliminate language made obsolete by HJR5.

**Senator Toryanski** said **S 1330** is a housekeeping bill which eliminates language found in *Chapter 401, Title 21, Idaho Code*, a statute that is outdated and inconsistent due to **HJR 5** which added a new section to the Idaho Constitution allowing public airports to issue revenue and special facility bonds provided that these bonds were paid solely from airport generated fees and not tax dollars.

**MOTION:** **Senator Lodge** moved, seconded by **Senator Darrington**, to send **S 1330** to the floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote.

**S 1366** RELATING TO ADMINISTRATIVE RULES to strengthen the legislatures statement of support for negotiated rulemaking by clarifying its purposes and providing minimum procedures to enhance public notice and participation.

**Roger Batt** stated that in 2008 he was involved in a project for the well construction industry which was involved in negotiated rulemaking with one of the state agencies. **Mr. Batt** shared his experience with the rulemaking process between a state agency and the well construction industry. The process was found to be frustrating and confusing in that they were not advised of changes of language and content within the rules. **Mr. Batt** shared this experience with members of other industries who had also conducted negotiated rulemaking over a period of years. He found that they shared similar experiences. In 2008, legislation was drafted to help rectify those issues. The legislation passed the House, but failed in the Senate.

In 2012, industry came back with a new piece of legislation and with a different approach to the rulemaking process. The legislation has been reviewed by eight state agencies in face to face meetings, phone calls, and e-mail correspondence. The agency personnel that provided input on this legislation were either a director or a deputy director, legislative coordinator, or the rules administrator for that particular agency. **Mr. Batt** consulted with **David Hensley** of the Governors Office, who selected the eight agencies that **Mr. Batt** personally met with. Those agencies were: Idaho Bureau of Occupational Licensing, Department of Environmental Quality, Department of Agriculture, Alcohol Beverage Control, Idaho Transportation Department, Idaho Department of Water Resources, Department of Administration, Department of Health and Welfare, and the Office of Administrative Rules. Many of these agencies provided input and suggested changes which were included in the legislation.

**S 1366** strengthens the negotiated rulemaking process. It allows for better transparency of public notice, participation, and sharing of information between the agency and those engaged in negotiated rulemaking. This legislation will result in a much clearer understanding of the information being considered, gathered, summarized, and debated by those engaged in the rulemaking process. The legislation establishes minimum procedures for agencies to follow if that agency determines it will engage in negotiated rulemaking. Some of the most important elements within this legislation are on page 2, lines 9-16 of the bill.

Industry and agencies agree it is important to provide better transparency of the process by establishing, maintaining, and timely updating of the negotiated rulemaking schedule. By providing a list of written comments and other documents to stakeholders that are pertinent to the information being discussed then preparing a written summary of unresolved issues, key information, and conclusions reached as a result of the negotiated rulemaking addresses the transparency issue. Clear language ensures that participants have access to the same information, clear understandings on what is being discussed, clarity of why issues may or may not have been considered or agreed upon, and consistency of sharing information with participants who have attended meetings to negotiate on subject matter important or critical to their industry.

Under this legislation, agencies have the discretion about the distribution of information that would make it accessible to negotiated rulemaking participants. This was the resolution we reached with the Department of Health and Welfare a couple of weeks ago to gain their support of this legislation.

**Senator Darrington** advised that when this legislation was considered some years ago and it included a timeline as to how the process would proceed. The timeline led to the demise of the original effort to strengthen negotiated rulemaking. **Mr. Batt** stated that initially they did establish a timeline and they took it out because it would not work for this legislation.

**Norm Semanko, Idaho Water Users Association**, spoke in support of this legislation. This legislation will provide guidance for the agency heads in drafting rulemaking.

**Jayson Ronk**, Idaho Association of Commerce & Industry, spoke in support of this legislation. They worked with **Mr. Batt** and Mr. Jensen for several years in crafting this legislation. They feel that **S 1366** will streamline the rulemaking process and ensure the rules are moved forward through a process that promotes consensus.

**Roy Eiguren**, Attorney/Lobbyist, spoke in support of the legislation. The changes that are being brought forward in this legislation will enhance the process of negotiated rulemaking.

**MOTION:** **Senator Lodge** moved, seconded by **Senator Stennett**, to send **S 1366** to the floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote.

**H 516** RELATING TO THE STATE LIQUOR DIVISION to make housekeeping revisions to eliminate unnecessary language, modernize obsolete terms, and clarify language relating to day-to-day operations.

**Jeff Anderson, Director**, Idaho State Liquor Division, advised that **H 516** is a housekeeping measure to amend *Title 23*, to eliminate and modernize obsolete terms and language relating to the day to day operations of their Division. The code has not been updated for some time and there is no fiscal impact. Some of the changes for consideration: 1) Eliminating references to a liquor commission; and 2) Specific definitions of how they do business at present.

**MOTION:** **Senator Fulcher** moved, seconded by **Senator Stennett**, to send **H 516** to the floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote.

**MINUTES APPROVAL:** Minutes for February 17, 2012 and February 22, 2012

**MOTION:** **Senator Stennett** moved, seconded by **Senator Malepeai**, to approve the minutes of February 17, 2012.

**VOTE:** The motion carried by voice vote.

**MOTION:** **Senator Lodge** moved, seconded by **Senator Darrington**, to approve the minutes of February 22, 2012.

**VOTE:** The motion carried by voice vote.

**ADJOURNMENT:** There being no further business **Chairman McKenzie** adjourned the meeting at 8:55 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

**AMENDED AGENDA #1**  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Room WW55**  
**Friday, March 09, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>H 490</u></a>	RELATING TO THE STATE SUNSHINE LAW to expand disclosure requirements and provides for campaign contribution limits for candidates.	Senator Smyser
<a href="#"><u>S 1373</u></a>	RELATING TO LABOR to add a new section to provide legislative intent and to provide for the "Open Access to Work Act".	Senator Pearce
<a href="#"><u>S 1362</u></a>	RELATING TO AN APPLICATION OF THE STATE OF IDAHO under Article V of the United States Constitution for a convention for proposing amendments to the United States Constitution.	Senator McKenzie
<a href="#"><u>SCR 126</u></a>	STATING FINDINGS OF THE LEGISLATURE and making application to the Congress of the United States for calling a convention for proposing amendments to the United States Constitution limited to specific subjects.	Senator McKenzie
<a href="#"><u>RS21494</u></a>	STATING FINDINGS OF THE LEGISLATURE to encourage the Health and Welfare Department to conduct town hall meetings to gather feedback on recruiting/retaining volunteer EMS personnel.	Senator Lodge
<a href="#"><u>RS21486</u></a>	RELATING TO THE MILITARY DIVISION to establish a mission and place command and control of the CAP Idaho Wing under the duly appointed officer of such wing.	Senator Winder

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Sen Darrington  
Sen Davis  
Sen Hill  
Sen Fulcher

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, March 09, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Senators Darrington, Hill, Fulcher, Winder, Lodge, and Stennett

**ABSENT/ EXCUSED:** Senators Davis and Malepeai

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** convened the meeting at 8:00 a.m. with a quorum present and started the meeting with **H 490** presented by **Senator Smyser**.

**H 490** RELATING TO THE STATE SUNSHINE LAW to expand disclosure requirements and to provide for campaign contribution limits for candidates.

**Senator Smyser** commented that this bill expands the Idaho Sunshine Laws by providing that campaign reporting law application applies to countywide measures including countywide recall elections. It also provides for the application of the campaign reporting law to candidates involved in citywide, statewide, or legislative district recalls. The term "measure" defines and limits campaign contributions for candidates.

**Senator Smyser** related to the proliferation of recall elections that were taking place in the Spring of 2011 in Idaho. Candidates sought to raise money to combat the recall and they were told that the money raised could not be reported because of the lack of any law addressing this issue. It was a loophole in reporting and kept these funds off the books. This legislation closes that gap and allows the public to have the ability to do campaign financing for recall elections under the current Sunshine Laws. **Betsy Kimbrough**, Elections Supervisor is in attendance to answer questions.

**Senator Stennett** asked if this would place the same kind of caps and criteria that is in effect in a regular election. **Senator Smyser** responded it would be the same. **Senator Stennett** asked if there are no limits on the recall funds and those funds are transferred to an accounting fund, is there a means to report those funds because the funding was over what was normal to a campaign. **Senator Smyser** said that would be in the application process and would be filed in the same way other campaign funding was filed.

**MOTION:** **Senator Hill** moved, seconded by **Senator Winder**, to send **H 490** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Senator Smyser** will be the floor sponsor.

**S 1373** RELATING TO LABOR to add a new section to provide legislative intent and to provide for the "Open Access to Work Act".

**Senator Pearce** explained that **S 1373** is known as the "Open Access to Work Act" and is similar to **S 1006** passed last session. Earlier in the 2012 session **S 1342** based on the same issue, was introduced but held by the sponsors in order to add language at the suggestion of the Attorney General. **Senator Pearce** outlined the history of **S 1006** which passed the Senate and was signed into law only to be overturned by Judge Winmill. **Judge Winmill** construed that the meaning of the



legislation was addressed so as to intersect with the National Labor Relations Board protection of labor union activities. Although the sponsors of **S 1006** did not agree with that decision, it provided insight into how to proceed with the current legislation. **Senator Pearce's** full comments on the current legislation and the changes from the earlier legislation, as well as the addition of the Attorney General's language, are attached as part of these minutes.

The bill addresses the concerns of the court, meets the goals of merit shop companies and workers, and does not violate any activities that are protected under the Nation Labor Relations Act. It is good for all parties and most particularly, the taxpayers of the State of Idaho.

**Senator Pearce** extended an invitation to testify to **Kate McCaslin**, President and CEO of the Inland Pacific Associated Builders and Contractors, a contractors trade association covering Idaho and Eastern Washington. **Ms. McCaslin** asked for the Committee's support on behalf of the open shop/merit shop contractors and their employees. This bill ensures that over ninety percent of nonunion construction workers and their employers will have an opportunity to bid on construction funded by tax dollars. It makes sure, through the bidding process, that state and local governments get the best construction for the best price. It does not interfere with the rights of private parties to negotiate union only labor agreements, it only says that government entities will not be able to enter into those agreements.

**Senator Stennett** stated that it is her understanding that state and local governments have a choice whether or not to enter into agreements with a union. **Ms. McCaslin** answered that they can choose a union contractor and for a particular project. This bill says the government would not get in the business of mandating or not mandating one. **Senator Stennett** requested percentages for work by a union shop versus an open shop. **Ms. McCaslin** replied that the Bureau of Labor Statistics indicate that over ninety percent of the workers in the State are open shop so it follows that the majority of contracts are open shop. Union contractors do get their share of projects, both public and private, in the State.

Public Testimony in Opposition of S 1373: James Piotrowski, Herzfeld & Piotrowski testified in opposition to this bill and his written testimony is included with the minutes.

**Senator Stennett** asked how many project labor agreements (PLAs) have been signed by local government in the State. Are they actively pursuing these labor agreements in public works? What are reasons local government would want to enter into a PLA?

**Mr. Piotrowski** responded that no agreements have been signed and he is not aware that anyone is actively pursuing a public sector PLA at this time. Highly skilled labor necessary to complete modern construction is difficult because of the rural nature of Idaho, especially when we are encountering fast changes within the construction industry. The skills needed and the size of the project would mean the project owner would want some security to guarantee that an adequate number of highly skilled, well trained, workers were available. On a case-by-case basis, a unit of local government may conclude that the best way to accomplish that is to ensure access to the hiring systems that are used by building and trade unions that maintain lists of highly skilled workers. Reasons for using a PLA are to meet timely completion dates, keep costs down, and to ensure a particular quality level.

**Chairman McKenzie** announced that **Brian Kane**, Assistant Chief Deputy, Attorney General's Office, was available to answer questions.

**Senator Winder** asked **Mr. Kane** to provide some background from his perspective i.e., specify what the judge ruled on and how **S 1373** specifically deals

with that issue. **Mr. Kane** said he will speak to these issues with the caveat that his remarks are subject to pending litigation because there is a pending appeal in front of the Ninth Circuit. The issue is directly addressed in the Attorney General's response of February 23, 2012, in the third paragraph (letter included in minutes). This legislation directly responds to what the federal judge identifies as a distinguishing characteristic between Idaho's legislation which was struck down and an executive order that was upheld in another case.

The other recommendation was to ensure that the specific remedy provided for in 2012 and 2013 sole remedies under the Right to Work Act are addressed. Those distinguishing characteristics have legal significance that is important.

**Senator Darrington** asked **Ms. McCaslin** to respond to the previous testimony with regard to the scope of the Idaho problem. **Ms. McCaslin** stated that in Idaho, there are a couple of very large PLAs driven by a federal government mandate. Nationally, not in Idaho, the union's use of strong arm tactics are pressuring local governments to impose union only PLAs. Being proactive will help Idaho avoid this situation. It does not say that private parties cannot engage in PLAs, it is saying that government cannot mandate use of PLAs. That protects local officials from intimidation tactics.

Nationwide, open shop workers and contractors complete over 88% of all construction put in place today. They are some of the largest companies and the most skilled workers in the country. If they were not, they would not own that share of the marketplace. This puts in print what was put in the record last year and was set aside by the judge.

**MOTION:** **Senator Winder** moved, seconded by **Senator Fulcher**, to send **S 1373** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Senator Pearce** will be the floor sponsor.

**Chairman McKenzie** turned the gavel over to senior member, **Senator Darrington**.

**S 1362** RELATING TO AN APPLICATION OF THE STATE OF IDAHO, under Article V of the United States Constitution, for a convention for proposing amendments to the United States Constitution.

**Senator Darrington** called on **Chairman McKenzie** to present **S 1362**.

**Chairman McKenzie** stated that these two items are very important for Idaho and he will address them both at this time. However, he will ask the committee to hold **SCR 126** in committee. **SCR 126** is the actual application calling for a convention. More education is needed before taking that step.

**Chairman McKenzie** said that **S 1362** related to Article V of the Constitution and stated the need for this to be discussed this year. **Senator Mike Crapo** spoke on the Senate floor not too long ago and he said "the threat we face for our debt crisis may be the greatest threat America has ever faced. I say that with the full knowledge of the wars we have been in and the other kinds of threats that we face. But this threat comes from within and it is significant in terms of its threat to the America we all know as anything that I have ever seen." **Chairman McKenzie** described that as a very strong statement and agreed with **Senator Crapo's** conclusion that the national debt has increased to the extent it is about \$61,000 per household and continues to grow at an unchecked rate. Attempts to control spending and reduce that debt has been rejected. The reason for the debt relates to the expansion of federal power under the commerce clause as interpreted by the U. S. Supreme Court in from the 1930s, in areas that were traditionally controlled by the states.

**Chairman McKenzie** stated that there is a solution to this problem. Article V is the states' ultimate power to reign in an out of control federal government. It was put in by the founding fathers as a fail-safe mechanism. It is not a self destruct button that some people worry about for an unlimited plenary convention but it is for use by the states to limit an out of control government. **S 1362** is something that has been worked on in Congress as well. When **Representative Minnick** represented Idaho in Congress, he joined a bipartisan group to push for the "Madison Amendment" to clarify that states could call a convention without a fear of a runaway and address issues that weren't brought before it. This Committee and the Senate passed an amendment last year on the "Madison Amendment" and it passed the House State Affairs but it was not voted on on the House floor because it was hanging on the calendar at the end. The issue was studied further and this bill is a better approach.

**Chairman McKenzie** explained that this statute would limit Idaho's delegates to a convention. From Madison's writings in the Federalist Papers 34 debate on this issue, it is clear that in a convention called by the states the delegates are agents of the legislatures. The states have the right to control their delegates to that convention. Because of that, we brought this proposal before the Committee.

**S 1362** would set up a procedure for our delegates to a convention. The way the convention would occur is that if two-thirds (34) of the states had the same subject matter for an application to Congress to call for a convention similar to those in **SCR 126** that are the most common subject matters for a convention. The most common relates to the federal debt and putting limitations on Congress' spending authority. If two-thirds of the states made an application for the same subject(s), Congress is required to call a convention. Idaho would send delegates to that convention. Those delegates, picked by the legislature are an extension of the legislature, and the legislature has the right to control the delegates. The bill would direct Idaho's delegates to support only the amendments that are in the application from Idaho. But if the convention goes beyond the specified subject matter and considers other subjects, Idaho delegates would have to vote "no" on those. Otherwise, they would be rescinded and the alternative delegates would take their place. It also provides a mechanism that allows the legislature to have the delegates consider limited subject matters beyond that upon approval by the Idaho legislature during the Article V convention. The last step in the process is if the convention comes up with language for amendments, three-fourths of the states (38) would have to approve that language.

The Committee is being asked to consider this Runaway Convention Act limiting the delegates if a convention was called. This is a step moving forward but it is not taking full action at this time.

**Senator Darrington** asked for questions from the Committee.

**Senator Hill** noted that the first "WHEREAS" referred to the "concurrent resolution that the Idaho Legislature has passed." It appears that one paragraph may not be appropriate. Should it affect the passage of this particular piece of legislation?

**Chairman McKenzie** acknowledged that point. It may be more substantive than technical so an amendment may be required.

**Senator Stennett** asked if the delegates were limited to certain topics and other states were not, what happens when some are held at a different standard at the convention? **Chairman McKenzie** answered that the first thing the delegates are asked to do is have the convention pass votes as listed on page 2, line 26. The delegates would ask the convention to adopt the rules which state that the Article V convention shall consider only those proposed amendments within the scope of the applications. Following the final vote on all motions on the proposed amendments related to the amendment, the convention will close.

If **S 1362** is passed and the convention has more subject matters than were on Idaho's application, Idaho's delegates would be present for the vote on those matters but they would not vote to approve any amendments that come for those additional subject matters. There is a provision where the legislature could allow for consideration for those if authority is given to the delegates during the call of the convention itself.

**Senator Fulcher** stated his understanding of Article V is that it only authorizes a convention for addressing specific amendments. Is that correct? If so, then why do we need **S 1362**? **Chairman McKenzie** agreed that the convention is limited only to favoring the proposed amendments stated in the applications. The bill limits Idaho's delegates if the convention considers subject matter beyond what is in Idaho's application.

**Senator Darrington** asked if there were others to speak to **S 1362**?

**Bliss Tew**, Orem, Utah, identified the word "specific" as in the discussion about specific amendments. However, when looking at Article V, the word "specific" does not appear so, in his opinion, the amendment is not limited to specific amendments. **SCR 126** lists seven potential amendments to consider then each of the fifty states could have different subjects. That would be 350 amendments to be considered. That many amendments would be quite sweeping. **Chairman McKenzie** has asserted it is not a general or constitutional convention, this many amendments would be as sweeping as a general convention. There was also the assertion that the thirty-eight states would be able to ratify the amendments that are the products of the convention. Does states mean state legislatures? It says in Article V, Congress may propose a method of ratification which might be either the state legislatures or it could be state ratification conventions. If Congress decides that the ratification conventions will be the model for ratification, the state legislatures will never have the opportunity to have any kind of hearing about any of the amendments or make any decision about what amendments are ratified.

Also, there was the assertion that the delegates attending the convention would be held to certain topics. But, what happens if the other states are held to something else. We can't assume what this convention would look like since no Article V convention has convened. How would the delegations be designed and how would you derive the number of members to the delegation from each state? Article V does not give the state legislatures any authority to set the agenda for the convention.

The real problem is that there is a government assembled in Washington D.C. that doesn't stay within the limited scope of their delegated powers. The concern is a runaway government spending trillions of dollars and putting us into debt. The problem is the Congress, President and the electorate do not follow the Constitution. Instead of tinkering with the Constitution, the electorate needs to be educated on the premise of the Constitution to limit the powers of the federal government and hold the federal government accountable to the Constitution.

**Senator Fulcher** understands that the purpose of **S 1362** is to limit Idaho delegates to what the State Legislature authorizes them to address. In sharing reservations about a constitutional convention, if that were to transpire, wouldn't it be at least some degree of wisdom, to limit the scope of the influence Idaho has control over, which is our own delegates? **Mr. Tew** concedes that might happen and it would be a wise idea if they can avoid other topics. Holding Idaho delegates to designated subject matter is questionable when 350 topics can be brought up. Are they going to leave it up to other delegates to decide on those topics or are they going to participate?

**John Runft**, Constitutional Attorney in Boise, testified in support of **S 1362** and the resolution for the convention. Mr. Runft shares the belief that there is a problem in our country and the need for the states to exercise some of their powers in the

Constitution. The key element of the Constitution is the division of power. There is an increased usurpation of power by the federal government. There has been a loss of division of power and a added concentration of power in the federal government. The Idaho Legislature and the public has expressed dissatisfaction with the current situation. There does reside in the Constitution one residual right for state sovereignty and that is Article V. It provides that the states can propose amendments to the Constitution and then it goes back to three-quarters of the states to ratify. That was insisted on by the states at the Constitutional Convention in 1787. It is fundamental—there wouldn't have been a deal if that had not been put in the Constitution. Alexander Hamilton put forth in Federalist Paper 85, a provision that "clinched the deal" and that is Article V of the Constitution. It is the rights of the states to call a convention and propose an amendment. The possibility of a runaway convention does not exist under Article V. That myth was perpetrated when the seventeenth amendment to allow a popular vote to the Senate was being debated. Congress acted and the law was changed before a continental convention could be called. There has never been a constitutional convention called for proposing amendments. It is a limited convention because they can only propose amendments which does not empower the convention to change any procedure in Article V. The possibility of a runaway convention does not exist in Article V in conjunction with the Supreme Court's power to issue a review.

The myth of a runaway convention arose about a century ago in the early 1900s with respect to the seventeenth amendment. Since that time there has been a great deal of research. There are three policy reports that have been made available to the Committee and are included as part of these minutes. Much more information can be accessed electronically. This information is important because it has to do with what the founding fathers meant by a constitutional convention and many other terms. It is a great irony that the one tool available is not being used to address the country's problems.

The topics included in the concurrent resolution are also of interest to other states who have been contacted as the resolution has been constructed. A convention can only be called by the agreement of thirty-three states on the proposal of those subject matters. It has to be thirty-three states agreeing to the same specific subject matters. It is the province of the convention to decide on the specific language of the proposal or the convention would not have a purpose. Logically and legally, if any new subject matters were raised in the call of the convention, they do not qualify.

**Senator Darrington** called for questions. Being none, he asked if there was further testimony.

**Dale Pearce**, Nampa, Idaho, testified in opposition to **S 1362**. In 1787 thirteen states sent representatives to a convention to improve the Articles of Federation only. They ultimately "trash canned" the Articles of Federation. Instead, they brought forth the greatest constitutional system this world has ever known. If a constitutional or amendments convention were called today, who would chair it? It could be the current President or the Secretary of State. Are they defenders of the Constitution? Idaho would have a small delegation and if they didn't like what was going on, they could come home and no one would care.

**Claudia Nelson**, representing herself, observed that there has been a good discussion but how do we know what will happen, we have never had a constitutional convention. Can we afford to take that chance and possibly lose what we have? She was not speaking for or against the bill.

Being no more testimony, **Senator Darrington** called on **Chairman McKenzie** to summarize.

**Chairman McKenzie** noted that the people who spoke today had valid concerns about the process. In reviewing the research, as **Mr. Runft** said, it would be a limiting convention and there are restrictions. **Representative Lynn Luker** is a cosponsor for this legislation. **Chairman McKenzie** thanked him and **Mr. Runft** for help on over ten revisions of the language and hours of research.

**Senator Darrington** called for the will of the Committee.

**MOTION:** **Senator Hill** moved, seconded by **Chairman McKenzie**, to send **S 1362** to the 14th Order for possible amendment.

**VOTE:** The motion carried by voice vote. **Chairman McKenzie** will be the floor sponsor.

**SCR 126** STATING FINDINGS OF THE LEGISLATURE and making application to the Congress of the United States for calling a convention for proposing amendments to the United States Constitution limited to specific subjects.

**Chairman McKenzie** withdrew **SCR 126**.

**RS21494** STATING FINDINGS OF THE LEGISLATURE to encourage the Health and Welfare Department to conduct town hall meetings to gather feedback on recruiting/retaining volunteer EMS personnel.

**Senator Lodge** requested that Wayne Denney, Chief of the Emergency Medical Services Bureau (EMS) present **RS21494**. She also requested that **RS21494** be sent to the floor instead of being returned to the Health and Welfare Committee.

**Chief Denney** brought RS21494 to the Committee. Members of the House and Senate Health and Welfare Committees identified several rule dockets relating to emergency medical services. The specific issue of grave concern was the viability that the system of services that volunteers provide on which the State of Idaho relies. Mr. Denney provided some statistics on the types and numbers of services that are provided to the State and the number of providers to carry out those services. Approximately 80% of the services are provided by volunteers. The numbers of volunteers has been stable over the past years but maintaining that workforce is becoming increasingly challenging in Idaho's rural communities. This concurrent resolution will allow the Bureau to carry the message into the rural communities with legislative intent.

**MOTION:** **Senator Darrington** explained that by printing the resolution it would go directly to the floor. He moved, seconded by **Senator Winder**, to introduce **RS21494** for print.

**VOTE:** The motion carried by voice vote.

**RS21486** RELATING TO THE MILITARY DIVISION to establish a mission and place command and control of the CAP Idaho Wing under the duly appointed officer of such wing.

**Senator Winder** explained that **RS21486** is a request from the Civil Air Patrol (CAP) regarding consolidation of the CAP and locating it at the Gowen Field facility subject to the control of the Adjunct General and the Director of the Department of Homeland Security.

**MOTION:** **Senator Lodge** moved, seconded by **Senator Fulcher**, to send **RS21486** to print.

**VOTE:** The motion carried by voice vote.

**ADJOURNMENT:** Being no further business, **Chairman McKenzie** adjourned the meeting at 9:28 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

**AMENDED AGENDA #1**  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Auditorium - WW02**  
**Monday, March 12, 2012**

**PLEASE NOTE CHANGE OF LOCATION**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>RS21506</u></a>	ADDING A SEVERABILITY CLAUSE to S1349	Senator Winder
<a href="#"><u>H 450</u></a>	RELATING TO ALCOHOLIC BEVERAGES to create an Alcohol Beverage Control Fund and to provide for the use of the fund moneys.	Lt. Robert Clements, Idaho State Police
<a href="#"><u>S1348</u></a>	RELATING TO THE MEDICAL CONSENT AND NATURAL DEATH ACT to revise provisions relating to health care providers unwilling to conform to the desires of patients and those authorized to consent for them.	Senator Nuxoll
<a href="#"><u>RS21502</u></a>	STATING FINDINGS OF THE LEGISLATURE and encouraging all Idahoans to use the year of March 4, 2012, to March 3, 2013, to prepare for the Idaho Territorial Sesquicentennial.	Senator Darrington

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Sen Darrington  
Sen Davis  
Sen Hill  
Sen Fulcher

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, March 12, 2012

**TIME:** 8:00 A.M.

**PLACE:** Auditorium - WW02

**MEMBERS PRESENT:** Chairman McKenzie, Senators Darrington, Davis, Hill, Fulcher, Winder, Lodge, Malepeai, and Stennett

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:02 a.m. with a quorum present. The first order of business was **RS21506** presented by **Julie Lynde**, Executive Director, Cornerstone Family Council.

**RS21506** **Ms. Lynde**, explained that **RS21506** adds the inadvertent omission of the severability clause that was intended to be in **S 1349**. The severability clause appears on page four, lines twenty-two - twenty-six. There is also a correction to the title. Nothing changes in the fiscal note. The body of **RS21506** is identical to **S 1349** with the addition of the severability clause. **Ms. Lynde** is asking the Committee to print this RS.

**Senator Stennett** asked why this change is coming as an RS. **Ms. Lynde** responded that they decided to take this approach instead of going to the amending order.

**Chairman McKenzie** explained that **S 1349** is scheduled later in the week and the sponsors discovered the omission of the severability clause and brought this RS to make that addition. This bill will replace the original bill.

**MOTION:** **Senator Fulcher** moved, seconded by **Senator Hill**, to send **RS21506** to print.

**VOTE:** The motion carried by voice vote.

**H 450** RELATING TO ALCOHOLIC BEVERAGES to create an Alcohol Beverage Control Fund and to provide for the use of the fund moneys.

**Lt. Robert Clements**, Idaho State Police (ISP), brings **HB 450** to the Committee. **Lt. Clements** outlined the sections of *Idaho Code* that gives the legislature authority over the sale and control of alcoholic beverages and who then charges the ISP with the responsibility and duty of assisting in the policing of the state to enforce the Idaho Liquor Act. That responsibility falls under the auspices of Alcohol Beverage Control (ABC).

**Lt. Clements** explained that over 8,000 license applications are processed annually and approximately 5,000 establishments are licensed to sell/dispense alcoholic beverages. ABC currently has one detective whose position is partially funded by a grant, to cover ABC enforcement for the entire state. ABC is responsible for the administration and issuance of licenses, background checks, premise checks, enforcement, and interpretation of alcohol beverage laws. This includes compliance, investigations, and assisting other law enforcement agencies in investigating criminal activity associated with alcohol. In addition, ABC is responsible for industry regulations such as aid to retailers and extension

of credit laws, providing training and guidance to ensure understanding, and compliance with alcohol regulations. There has been an increase of activity in all of these areas.

With adequate staffing, ABC could proactively ensure compliance with alcohol beverage laws consistently throughout the state; enhance customer service through increased assistance to licensees and other law enforcement agencies; and provide more efficient service for the citizens of Idaho. ABC had ten officers in 1964 with a population of approximately 667,191. Today, Idaho's population is reported to be 1,567,582 and ABC is operating with the same number of officers. There should be twenty three officers at the current level of population. The Governor's 2020 Blue Ribbon Task Force estimated the annual cost of alcohol abuse in Idaho to range from \$120 million to \$500 million. Underage drinking cost the citizens of Idaho \$300.0 million in 2010.

**Lt. Clements** added that this proposed legislation is to secure dedicated funding for ABC. It creates a dedicated account and funding source from current license fees for ABC staffing and operations by making changes to *Idaho Code 23-940*. For a list of agencies that support this bill, see **Lt. Clements** notes recorded as part of the minutes.

**Senator Darrington** stated that this is long overdue. Has JFAC authorized the ISP to hire people needed to move into this program? **Lt. Clements** answered that JFAC will fund this based on the legislative changes that are approved.

**Senator Winder** said he was asked a question coming into the meeting. Is there a transfer fee charged on liquor by the drink? **Lt. Clements** responded yes. Nothing changes as far as the license or transfer fees.

Testimony in support of H 450:

**Justin Ruen**, Association of Idaho Cities.

**Ken Harward**, Executive Director of Association of Idaho Cities submitted a letter of support.

**R. David Moore**, Blackfoot Police Department.

**Michael Kane**, Idaho State Police representing the Sheriff's Association.

**Senator Fulcher** questioned **Mr. Kane** about "may" in line twenty-five, page one. If these monies are not expended by ABC, where would they go? **Mr. Kane** said his understanding is that they would go into the general fund.

**Senator Davis** interpreted the language to say the funds may be expended but subject to appropriation. It might be better to take the "may" out on line twenty-five and say the appropriations process shall be subject to legislative..... **Mr. Kane** supports this bill and would not be opposed to some amendments with language changes.

**Roger Batt**, representing the Idaho Grape Growers and Wine Producers, spoke in support of H 450.

**John Evans**, Mayor, City of Garden City, supports H 450. Garden City deals with the consequences of over-serving i.e., significant issues with DUIs and, both misdemeanor and felony aggravated assaults. They do not have the tools they need to avoid these issues. **Mayor Evans** said they need the help from ABC for training the servers and bar owners about state provisions. Right now, ABC can't provide those services.

**Jeff Lavey**, Chief of Police, Meridian, spoke as President Elect of the Idaho Chiefs of Police Association (ICPA). **Chief Lavey** testified in support of H 450 and submitted a letter of support from ICPA.

**Stacy Arnold**, Sergeant, Meridian Police Department, testified in support of H 450. **Sgt. Arnold** provided some background and costs associated with alcohol control experienced by the City of Meridian.

**Jeremy Pisca**, Attorney with Risch & Pisca representing the Idaho Beer and Wine Distributors Association, supports H 450. This legislation is long overdue. The dues and license fees are really user fees but since those fees go into the general fund, the users are not receiving any benefit from them. Under-funding ABC is tantamount to deregulating alcohol and that is a very important program to fund. There is currently a backlog of investigations in the ABC that are critical to the enforcement of the three-tier system.

**Ken Burgess** testified in support of H 450 representing the Idaho Licensed Beverage Association which is comprised of liquor by the drink licensees. This proposal will allow ABC to enhance and improve its enforcement and investigation activities around the state. **Mr. Burgess** said they believe ABC should take a lead role in training local law enforcement and the hospitality industry on what constitutes a violation and to provide clear expectations of what happens in the event of a violation. The passage of this bill will go a long way toward accomplishing the common goal of responsible alcohol beverage service.

**Cindy Schiller**, Nampa, Idaho, representing Treasure Valley Alcohol & Drug Coalition (TVADC) and Community Coalition of Idaho (CCI), testified in support of H 450. **Ms. Schiller** stated that a national organization report that enforcing underage drinking laws is the number one deterrent to underage drinking. She asked the Committee to support this bill.

Testimony in opposition to H 450: Jan Sylvester, Meridian, Idaho

**Lt. Clements** asked if there were any further questions about the 200% in the bill. **Senator Davis** stated that he had some alternative language to review regarding the monies in the fund that can be expended. On line thirty, looking at the word "current," were you trying to apply it to 2012 or the current fiscal year? **Lt. Clements** said that the 200% of the appropriation for that year would roll back to the General Fund so the fund wouldn't grow to much.

**MOTION:**

**Senator Davis** moved, seconded by **Senator Fulcher**, to send **H 450** to the 14th order for possible amendment.

**Senator Davis** noted that he would consult with his counterpart in the House to ensure that if the amendments are made quickly, there would still be time to get **H 450** through the legislative process. If the answer is no, then the inclination is to advise the ISP to bring this legislation back for improvement next year. There are only two amendments to the bill: (1) On line twenty-five, change "funds may be expended pursuant" to "the expenditures in the fund shall be subject to legislative appropriation for use by the ISP and ACB" and pick up the remaining language in that sentence. (2) On line thirty where it says "the current fiscal year," change the word "current" to "that" fiscal year. That is the target the ISP wants to achieve and that is the intent of the motion.

**Chairman McKenzie** asked for a vote on the motion to send **H 450** to the 14th amendment.

**VOTE:**

The motion carried by voice vote.

**S 1348**

RELATING TO THE MEDICAL CONSENT AND NATURAL DEATH ACT to revise provisions relating to health care providers unwilling to conform to the desires of patients and those authorized to consent for them.

**Senator Nuxoll** introduced **S 1348** stating that this bill is a pro-patient bill and a preventive measure bill. The reasons for the changes are; patients need to be protected from involuntary denial of food and fluids and from involuntary denial of life preserving medical treatment. Patients and their families, not others, should be able to decide whether their lives are worth preserving with lifesaving medical treatment, food, and fluids. **Senator Nuxoll** proceeded through the bill, explaining each change and the reason for that change. Points that are important to consider are

- Who should make the life/death decision; the patient and family or the doctor?
- Is it the patients right to decide how he/she wants to live, even for a short period of time?
- This is a balance between extremes: (1) keeping patients alive by machines while in a vegetative state and (2) letting patients die by refusing treatment based on personal opinion against individual directions or advanced directives.
- What is the definition of "good faith effort?"
- How is "medically inappropriate of futile" interpreted?

**Senator Nuxoll** addresses these issues in her explanation of the bill and how the bill provides a standard to be followed by the patient and/or surrogate and by the physician. The bill has been reviewed by the following entities and has their support.

Right to Life of Idaho

Idaho Chooses Life

Cornerstone Family Institute

Idaho's Affiliate of Focus on the Family

Idaho Council for Developmental Disabilities

**Senator Nuxoll** announced that there had been a compromise between the Idaho Medical Association and Idaho Right to Life resulting in some amendments that will be made to the bill. **Senator Nuxoll** requested that **Jason Herring**, Right to Life of Idaho, be allowed to speak for this bill.

**Mr. Herring** testified in favor of **S 1348** stating that they had been working diligently to come to a compromise that would satisfy all parties involved. **Mr. Herring** introduced **Ken McClure**, who spoke on behalf of the Idaho Medical Association (IMA). **Mr. McClure** had a draft of the changes made to **S 1348** that met the requirements agreed upon during the discussions leading to the compromise. The IMA has been troubled by legislation that deals with end of life care. End of life care is a personal thing for doctors as they deal with it every day.

The IMA was concerned with the implications of the original bill that physicians are making decisions that discriminate between patients. That is a violation of doctors' ethics, a violation of the Hippocratic Oath, and a violation of Idaho law. The focus of the new language makes it clear that the patient is "in the driver's seat" with respect to the degree or standard of care he/she wants. *Section 39-4515 (3), Idaho Code*, outlines the withdrawal of care segment of the bill and the changes that were made. This section was removed from the euthanasia section because it is not related to euthanasia. **Mr. McClure** addressed all the changes that were suggested by the IMA. The IMA's view is that this bill puts the patient in charge, it balances the rights of patient versus the ability of medicine to do some things and the inability of medicine to do other things. **Mr. McClure** noted that this bill does not conflict with changes made in the earlier bill, **S 1294**, that came from the Health and Welfare Committee.

**Senator Stennett** asked if this would only apply to a patient who is lucid and conscious and able to determine what choices to make. **Mr. McClure** responded

not entirely. This bill only comes into effect when the patient is not competent. If the patient is not competent, the directives are important because they, or a surrogate will make the decision for that patient. **Senator Stennett** asked what happens if the patient decides he/she wants something different than what is in the directive – where does that place the physician? **Mr. McClure** said a competent patient can always withdraw a directive. An incompetent patient who has a surrogate can also give direction. For an incompetent patient without a surrogate, it would be hard for the directive to be changed because they are considered incompetent. However, doctors try to do what a patient wants to be done. If it is legal they will, if family is around, they take the family's wishes into consideration. A family's wishes are typically listened to. **Senator Stennett** stated that she has a problem with this part of the bill. When a surrogate or family can undo the wishes of the patient, it is a whole different area. In the end, a family member can determine the patient's care, is that correct? **Mr. McClure** indicated that there are lawyers in ICU and if families do not agree, then the lawyers get involved. As a matter of practice, if the treating physicians and the hospital staff are aware that the patient wants a different kind of treatment, they are not legally permitted to give that treatment if it is not in the directive. That is existing law and this bill is not going to change it.

**Senator Malepeai** stated that there are people in Idaho communities that are economically challenged and cannot afford the cost to prepare advanced directives. When there is a situation where there is no advanced directive, and there is no legal family although the persons involved have been considered a family, who then, can make those decisions? **Mr. McClure** responded that advanced directives are easy and they do not require a lawyer. One can be obtained at any hospital in the state and it can be completed at the time of check-in. In the case of someone who doesn't have a directive, authorized surrogates are available to make those choices for that patient.

**Mr. Herring** confirmed that their lawyers agreed that there was no conflict with **S 1294**. To address some other points raised, the original language did not deal with the administration of comfort care but only the withdrawal of comfort care. **Mr. Herring** provided a side-by-side comparison of the original draft and amended draft of **S 1348** on file with these minutes. This is not an anti doctor bill and it is not an indictment against hospitals. This is a preventative measure.

**Mr. Herring** continued his explanation, saying that this legislation protects the rights of the patient and is groundbreaking for Idaho in its definition of futile care by making the standard a medical judgment. Medical technology and science has advanced to a degree where people can be kept alive longer than ever before but there may be a time when care becomes futile. This bill recognizes and defines that line. It requires physicians to go beyond that point and protects the patient by preventing a doctor from preempting that line based on a subjective standard.

**Monica Hopkins**, Executive Director, ACLU of Idaho, testified that originally they were going to oppose this bill. Their concerns echoed the IMA's concerns. Given the substantial amendments to the bill, the ACLU will be neutral until they have time to review those amendments.

**Dr. LaVonne Mills**, family physician from Pocatello, spoke on behalf of **S 1348**. **Dr. Mills** stated that about seventy five percent of her practice is caring for geriatric patients and adults with disabilities. In addition, **Dr. Mills** is a hospice physician and the medical director for a hospice agency in Southeast Idaho. The Idaho Natural Death Act currently says that doctors are not compelled to provide medical care that they believe is inappropriate or futile and that will not change with these amendments. The doctor can withdraw as the patient's physician as long as they make a good faith effort to assist the patient in obtaining

another physician willing to provide the desired care. The problem with the current statute is that the doctor can refuse to provide or stop the types of medical care that they believe to be inappropriate or futile even against the explicit wishes of the patient or his/her surrogate or advanced directive. There are no guidelines or limits to help the doctor determine that the medical care is inappropriate or futile except that euthanasia is not legal. Supporting these proposed amendments will at least give some additional, reasonable guidance for doctors in making that kind of determination. With these amendments, determination of futile care would need to be based on a scientific medical assessment that death is imminent. In cases of disagreement, these amendments spell out clearly for doctors, health care providers, and ordinary people, that if health care such as the use of artificial nutrition and hydration or antibiotics can actually prolong someone's life, then it is the patient who decides whether or not to use the treatment, not the doctor deciding by him or herself.

**Kerry Uhlencott**, Legislative Coordinator, Right to Life of Idaho, testified in support of S 1348. **Ms. Uhlencott** gave a narrative of her personal experience when a physician, not the family physician, tried to stop care for her mother. The family doctor had prescribed basic hydration and nutrition through a feeding tube. The secondary physician pursued his objections by contacting other members of the medical staff and ethics committee. Ultimately, the family prevailed. However, if the primary doctor had disagreed with them, under current law, he would have been allowed to stop treatment because "medically inappropriate or futile" was not clearly defined. When it comes to lifesaving treatment issues, the wishes of the patient and/or family needs to be respected and protected.

**Julie Lynde**, Executive Director, Cornerstone Family Council testified in support of S 1348. This legislation is a proactive and preventative bill that focuses on the important aspects of comfort care, futile care, food and hydration. **S 1348** is an affirmation of the patient's wishes through an advance directive or surrogate. This is good policy because it replaces a standard "good faith judgment" with objective standards. It separates important components of care: comfort care, futile care, and hydration and nutrition. It clarifies the priority of a patient's advance directive, surrogate and the advice of the physician. The proposed amendment provides for a definition of "futile care."

**David Ripley**, Executive Director, Idaho Chooses Life, testified in support of S 1348. The purpose behind this bill is to strengthen the legal protections for human beings in the state of Idaho. This bill affirms that food and water are not extraordinary medical treatment but a need for human life.

**MOTION:** **Senator Winder** moved, seconded by **Senator Fulcher**, to send **S 1348** to the 14th order for possible amendment.

**VOTE:** The motion carried by voice vote.

**RS21502** STATING FINDINGS OF THE LEGISLATURE and encouraging all Idahoans to use the year of March 4, 2012, to March 3, 2013, to prepare for the Idaho Territorial Sesquicentennial.

**Senator Darrington** stated that this is a concurrent resolution to recognize the coming Sesquicentennial of Idaho territory in 1813. A ceremony was held in the Governor's office where the State of Idaho received a contribution of the Lincoln Collection that was given to the State Historical Society, State Archives, and Museum. This resolution asks the communities, groups, and interested parties throughout Idaho to spend the next year in preparation for the celebrations and commemorative events honoring the Territorial Sesquicentennial.

**Janet Gallimore**, Executive Director, Idaho State Historical Society (ISHS), explained that this concurrent resolution allows Idaho to commemorate its Territorial Sesquicentennial and celebrate the legacies of the territorial era. The ISHS is serving as a catalyst for a statewide, grassroots effort to create a community level program for maximum impact. The passing of **RS21502** will help encourage Idahoans to make the connection between the territorial roots and create legacies for Idaho's future.

**MOTION:** **Senator Winder** moved, seconded by **Senator Lodge**, to send **RS21502** to print.

**VOTE:** The motion carried by voice vote.

**ADJOURNMENT:** Being no further business, **Chairman McKenzie** adjourned the meeting at 9:51 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

AGENDA  
**SENATE STATE AFFAIRS COMMITTEE**  
8:00 A.M.  
Auditorium - WW02  
Wednesday, March 14, 2012

**PLEASE NOTE CHANGE OF LOCATION**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>H 491</u></a>	RELATING TO VOTING MACHINE APPROVAL to transfer the authority of voting machine and tally systems certification from the federal Election Assistance Commission (EAC) to the Idaho Secretary of State to enable the Secretary of State to certify voting equipment without EAC approval.	Teresa Baker, Ada County
<a href="#"><u>RS21487</u></a>	RELATING TO THE BOARD OF DIRECTORS OF THE STATE INSURANCE FUND to remove the requirement that Board Members must participate in PERSI.	Senator Goedde
<a href="#"><u>RS21481</u></a>	STATING FINDINGS OF THE LEGISLATURE to honor seven Idaho servicemen who fought and lost their lives in Iraq and Afghanistan within the last year.	Senator Davis
<a href="#"><u>S1387</u></a>	RELATING TO ABORTION to require the use of an ultrasound prior to an abortion and to provide an additional resource listing of places where pregnant mother's can obtain an ultrasound free of charge. When enacted, this legislation will codify the standard medical practice of using an ultrasound and referrals as described.	Julie Lynde, Kerry Uhlenkott, and Jason Herring

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Sen Darrington  
Sen Davis  
Sen Hill  
Sen Fulcher

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

Twyla Melton  
Room: WW42  
Phone: (208) 332-1326  
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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, March 14, 2012

**TIME:** 8:00 A.M.

**PLACE:** Auditorium - WW02

**MEMBERS PRESENT:** Chairman McKenzie, Senators Darrington, Davis, Hill, Fulcher, Winder, Lodge, Malepeai, and Stennett

**ABSENT/EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present and welcomed **Teresa Baker**, Ada County, to present **H 491aa**.

**H 491AA** RELATING TO VOTING MACHINE APPROVAL to transfer the authority of voting machine and tally systems certification from the federal Election Assistance Commission (EAC) to the Idaho Secretary of State to enable the Secretary of State to certify voting equipment without EAC approval.

**Ms. Baker** outlined the three points of the bill:

- To introduce competition lowering the price of election equipment to the counties.
- To allow counties to use the improved technology.
- To allow Idaho to take authority back from the federal government.

**Ms. Baker** went on to explain that the EAC is a four member board formed in 2002 as part of the Help America Vote Act (HAVA) and acts as a national clearing house and information resource regarding election administration. Since December 2011, there have not been any sitting members on the EAC and there has not been a quorum since the boards inception. They have never certified any new election equipment.

Idaho has the most restrictive standards for certifying equipment because the statute requires federal certification. Idaho is one of eleven states that requires EAC certification. **H 491aa** allows the Secretary of State to adopt standards. The Secretary of State can develop their own standards, work in cooperation with other states, or use federal standards to develop State standards that will still meet the EAC standards but without EAC approval. Any voting equipment must be tested by an independent testing laboratory and that cost will be born by the vendor. This system will bring competition into the market and allow counties to cut their cost.

**Phil McGrane**, Ada County, was available to answer questions.

**MOTION:** **Senator Darrington** moved, seconded by **Senator Lodge**, to send **H 491aa** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Chairman McKenzie** will be the floor sponsor.

**RS21487** RELATING TO THE BOARD OF DIRECTORS OF THE STATE INSURANCE FUND to remove the requirement that Board Members must participate in PERSI.

**Senator Goedde** explained the **RS21487** changes one section of Idaho Code from (h) to (n) as it relates to State Insurance Fund board members. This change will remove the requirement that they participate in PERSI since such membership limits their participation in a personal IRA. This will provide the State some financial and labor savings.

**MOTION:**

**Senator Fulcher** moved, seconded by **Senator Hill**, to send **RS21487** to print.

**VOTE:**

The motion carried by voice vote.

**RS21481**

STATING FINDINGS OF THE LEGISLATURE to honor seven Idaho servicemen who fought and lost their lives in Iraq and Afghanistan within the last year.

**Jamal Lyksett**, Intern for **Senator Davis**, presented **RS21481**. **Mr. Lyksett** stated that this RS proposes to honor seven Idahoans who have died in military service for this country within the last year. Not only does this honor their service, but recognizes the impact that these lives have on Idaho families. All of these soldiers were less than thirty years of age. **Mr. Lyksett** related how this loss will affect the families and communities where those brave men lived. The following servicemen are being recognized:

- Army PFC Robert Near, Nampa, ID
- Army Sgt. Nathan Beyers, Coeur d'Alene, ID
- Army Spec. Nicholas Newby, Coeur d'Alene, ID
- Army Spec. Devin Daniels, Council, ID
- Army Spec. Robert Dyas, Nampa, ID
- Army Sgt. Ryan Sharp, Idaho Falls, ID
- Marine Lance Corp. Kenneth Cockran, Wilder, ID

This resolution is a small way to honor these servicemen and acknowledge the sacrifices they made. (NOTE: A copy of Mr. Lyksett's full testimony is attached for the record.)

**MOTION:**

**Senator Winder** moved, seconded by **Senator Fulcher**, to send **RS21481** to print.

**VOTE:**

The motion carried by voice vote.

**S 1387**

RELATING TO ABORTION to require the use of an ultrasound prior to an abortion and to provide an additional resource listing of places where pregnant mother's can obtain an ultrasound free of charge. When enacted, this legislation will codify the standard medical practice of using an ultrasound and referrals as described.

**Chairman McKenzie** outlined the procedures to be followed in the discussion and testimony for **S 1387** and asked Senator Winder for opening remarks.

**Senator Winder** noted his respect for activities that have occurred regarding this bill, e-mails and protests on the capital steps, by people exercising their first amendment right. The turn out today is appreciated and there should be some interesting testimony and he asked that everyone keep their minds open and be attentive to what is being said. This bill came forth from Idaho Right to Life by women who asked **Senator Winder** to be a sponsor of this legislation. It is his belief that the state has an interest in protecting the life of the unborn and that is the purpose, at least for himself, to speak for those who can't speak for themselves. Some people think this is an intrusion into the private lives and decisions of women. The Senator respects their point of view but, in his opinion, sees a higher need to protect the unborn and respect the life of a developing child. The original draft of the bill gave people the opportunity to challenge it on the basis of an intrusive medical procedure called a transvaginal ultrasound. The Senator found that to be

an issue, so that issue has been removed and it is left up to the women as to the best manner in which to have the ultrasound done. The presenters are going to talk specifically about the bill but he will stand for questions and close the discussions.

**Kerry Uhlenkott**, Legislative Coordinator, Right to Life of Idaho, explained that **S 1387** will require that an ultrasound be performed on a pregnant mother prior to the performance of an abortion by a method that the abortion provider and the woman decides upon. Under existing Idaho law, the mother is already offered an opportunity to view the ultrasound image as part of the Woman's Right to Know Informed Consent Statute of 2006. Ultrasound is a key element to provide information for an informed consent. There has been a study that shows 99% of abortion clinics use ultrasound prior to an abortion.

**Ms. Uhlenkott** went on to say that ultrasound is a common and useful diagnostic tool in verifying and dating the pregnancy as well as assessing the gestational age, size, and growth of an unborn child. The National Abortion Federation recommends ultrasound use prior to an abortion. An abortion clinic in Idaho has confirmed on its website, that they perform ultrasounds prior to the performance of an abortion.

**S 1387** also provides that a pregnant woman be given a listing of places that offer free ultrasounds. The Department of Health and Welfare (H & W) provides a list of other resources to pregnant women. This is an additional item of information will be added to that list. In this proposal, H & W is required to inform a pregnant woman that she has the right to view an ultrasound, hear the heartbeat of her unborn child, and where to obtain an ultrasound free of charge.

The controlling case law in this issue is from *Planned Parenthood vs Casey* and *Gonzales vs Cartwright*. In 1992 in the *Casey* decision, the US Supreme Court held that states having prior information to an abortion "that is truthful and not misleading," be made available to a woman to help ensure that she completely understands "the full consequences of her decision." The court in the *Gonzales* case stated that having the information reduces "the risks that a woman may elect an abortion only to discover later, with devastating psychological consequences, that her decision was not fully informed." The images from an ultrasound are truthful and not misleading and can lead to a more informed consent. It also allows the mother to view the unborn child for herself so her decision is based on seeing, not opinion, but objective and accurate fact.

**Ms. Uhlenkott** reviewed the sections of the bill that are being amended. She described as the heart of the bill, subsection (5), page 3, lines 1-7 which is the performance of an ultrasound. Each of the remainder of the sections were explained: page 2, lines 13-18 regarding lists of providers free of charge; page 2, lines 19-25 informs the woman of her right to view the image and hear the heart tone; page 3, lines 19-46 requires a signed and dated statement from the physician who performs the abortion.

This legislation is also supported by Cornerstone Institute, Idaho Chooses Life, Choices Pregnancy Center in Sandpoint, Pregnancy Crisis Center in Twin Falls, Stanton Healthcare Center in Boise, and Wish Medical Clinic in Moscow.

**Senator Stennett** referred to the ten facilities that offered free ultrasounds. H & W reported thirteen facilities of which only two provide trained ultrasound technicians and those two are not abortion clinics but pro-life clinics. These facilities are not conducted by health professionals, are not certified by ARGMS, and are not compliant for these types of procedures. Are there any facilities in the State that are free, and offer abortions by doctors and health professionals that are certified? **Ms. Uhlenkott** responded that there are ten pro-life pregnancy centers throughout the state and there is a list of those. Seven are in Idaho; the other three are in Spokane.

**PUBLIC  
TESTIMONY:**

**Sue Philley**, submitted a signed petition that she sponsored opposing S1387. Ms. Philley stated that the petition stated that health care decisions are best made by individuals and their medical providers and mandatory ultrasounds place undue burden on women and interfere with individual rights to privacy. This bill does not meet the Republican goal of less government. The signers want legislation that addresses issues that affect the quality of their lives, not their private lives.

**Senator Davis** counseled all speakers to be respectful. There may be disagreement on how this issue is viewed, but calling people and their approaches names or referring to them by metaphor, simile, or comparison to others that we all would repudiate is not helpful for either side. Please be respectful in your speech. We stop listening when that approach is taken and we do want to listen.

**Yvette Sedlewicz**, Registered Nurse, representing self and husband, testified in opposition to S 1387.

**Jean Hudlet**, licensed RN and Nurse Manager, Life Choices Pregnancy Center, Sandpoint, testified in support of S 1387.

**Jill Jasper**, Boise, testified in opposition to S 1387.

**Susan Young**, Director of Life Choices Pregnancy Center in Sandpoint, supports S 1387.

**Senator Stennett** intervened and agreed with **Senator Davis** that both sides of the aisle should keep the slander down.

**Dwight Scarborough**, a father, a citizen, and a Navy veteran spoke in opposition to S 1387. Senator Winder thanked Mr. **Scarborough** for his service to the country.

**Nicole Betty Hagworth**, citizen, opposed S 1387.

**Ron Rhodes**, Boise, opposes S 1387.

**Curt Naeve**, spoke in opposition of S 1387.

**Brandy Swindell**, Founder and Director, Stanton Healthcare, spoke in support of S 1387.

**Adrienne Evans**, Executive Director, United Action for Idaho, and submitted a sign up letter to oppose S 1387.

**Senator Nuxoll** testified in support of S 1347.

**Pamela Reider**, Nurse and Diagnostic Stenographer for 20 years, testified in opposition to S 1387.

**Senator Stennett** asked **Ms. Reider** when should an abdominal ultrasound be preformed and when is it appropriate for a transvaginal ultrasound? **Ms. Reider** said that between six and twelve weeks, a transvaginal is needed but after fourteen weeks, an abdominal would be sufficient.

**Betsy McBride**, representing League of Women Voters spoke and submitted a letter in opposition to S 1387.

**Arvell Bajama**, submitted oral and written testimony in support of S 1387.

**Bonnie McKay Pfaff**, Co-President, American Association of University Women of Idaho and on behalf of AAUW, opposes S 1387.

**Stacey Harder**, Client Advocate, Stanton Healthcare Center, Boise, spoke in support of S 1387.

**Hannah Brass**, Legislative Director, Planned Parenthood Votes Northwest gave oral and written testimony in opposition to S 1387.

**Senator Stennett** asked **Ms. Brass** how many clinics in Idaho will offer all the requirements for free. **Ms. Bass** responded that free ultrasounds wouldn't be acceptable by an abortion clinic. They must do their own. **Senator Stennett** asked about informed consent. The Senator's understanding is that existing statute includes a medical emergency exception. This bill does not make it clear that a medical emergency would be excused if there was not a performance of the ultrasound. Could you clarify that? **Ms. Brass** answered that section five talks about a medical emergency but sections six and seven do not. **Senator Stennett** said it is unclear in this bill that it would allow for a medical emergency exception and that could be a dilemma for the physician. **Ms. Bass** answered that it is clear there is no mandate for a medical emergency.

**Julie Lynde**, Executive Director, Cornerstone Family Council, provided oral and written testimony in support of **S 1387**.

**Senator Malepeai** asked **Ms. Lynde** if politicians should inject themselves between a physician and a patient? **Ms. Lynde** responded that the State of Idaho supports a stated purpose of live births over abortion and government is designed to protect its citizens. An unborn baby is, in her opinion, a citizen as well as the woman. When the government steps in and says a guideline should be established, that is appropriate.

**Senator Stennett** sought to identify any other medical procedure that was required by the State of Idaho. There are a few for lawbreakers. Would you please address why this procedure should be required when all others are criminal? **Ms. Lynde** stated she was not a physician or an attorney but abortion law and the practice of abortion is a very complicated area of medicine and law. There are many things surrounding it since 1973 and up through all the court decisions. The Supreme Court has said that the states have it within their rights to have certain guidelines that do not stop abortion but protect the innocent in that abortion.

**Chairman McKenzie** announced that time is limited so those with written testimony could hand it to the pages to be entered into the record.

**Monica Hopkins**, Executive Director, American Civil Liberties Union of Idaho (ACLU), submitted oral and written testimony in opposition to **S 1387**.

**Senator Stennett** stated her concern with the documentation segment of the bill. Is the statement that must be filled out and signed subject to public record? **Ms. Hopkins** said it would violate the privacy of the woman and the physician if these records were to be made public. **Senator Stennett** referred to page three, lines five and six that talks about the type of ultrasound being decided between the doctor and patient, it contradicts line six where it says the physician has to know the gestational age of the fetus and there is no option for an undetermined diagnosis. It is **Senator Stennett's** understanding that 80% of the abortions are less than ten weeks. If that is true, how can anything other than a transvaginal ultrasound be used? **Ms. Hopkins** answered that is correct. The providers indicated to the ACLU that the transvaginal ultrasound would be required in the early stages of pregnancy of which 80% are in the early stages. Additionally, ultrasounds are not the only way to establish gestational age.

**Jason Herring**, President, Right to Life, gave oral and submitted written testimony in support of **S 1387**.

**Senator Lodge** referred to page three, line 19, that says the physician performing the abortion shall sign and date the statement indicating the time of day when the ultrasound test was performed. Are there any of the abortion centers that provide a free ultrasound. **Mr. Herring** was not aware of any. This bill gives the woman a chance to get a free ultrasound and where she would have access to counseling as well, but it does not require her to have two ultrasounds. **Senator Lodge's** concern is that if a woman gets one free and then goes to the abortion provider and has to pay, that is adding to the cost. In this bill, the physician has to sign the statement. If there is an ultrasound available, why can't it just say the woman had the ultrasound. **Mr. Herring** agreed that was a valid concern. The abortion clinics want their own technicians to do the ultrasound. Also, the ultrasound that is free would not be an additional cost to the state, it is free.

**Senator Lodge** found two things that did not equate. The woman has the ultrasound and sees it. She still has to have one where a physician signs off on it in this legislation. **Senator Lodge** supports the rights of the unborn child but there are some points in this legislation that make it very difficult. It doesn't seem right to have to go through a dual procedure.

**Heather Hammerstedt**, M.D., testified in opposition to **S 1387**.

**Chairman McKenzie** closed the public comment segment and asked for closing comments.

#### Written Testimonies Submitted Due to Lack of Time to Testify

##### In opposition of S 1387

**Nadine York**, Boise, ID  
**Katie Fite**, Boise, ID

**Annie Kerrick**, Idaho Coalition Against Sexual & Domestic Violence, Boise, ID  
**John C. McMahon**, Boise, ID

##### In support of S 1387

**Angela Dwyer**, Volunteer, Stanton Healthcare, Boise, ID  
**Fran Lawrence**, District 15

#### Letters

**Susie Pouliot**, Chief Executive Officer, Idaho Medical Association, Boise, ID, stated concerns but no decision one way or the other.

**Kay Hummel**, Boise, ID, in opposition.

**Brenda Saltzer**, CEO, Wish Medical, Moscow, in support.

**Faye Weber**, Boise, ID in opposition.

**Liz Conrad**, in opposition.

**Senator Winder** thanked all who testified on both sides of this legislation as part of the process that occurs at the legislature.

**Senator Stennett** asked **Senator Winder** if this legislation is in conflict with the Idaho Medical Consent Act because it puts forth that adult persons have the fundamental right to control decisions relating to the rendering of their medical care and the importance of privacy and respect for the patient. **Senator Winder** stated that was a question the Attorney General should answer.

**Senator Malepeai** asked about the severability clause. Could this legislation be flawed or could it be open to constitutional interpretations? **Senator Winder** answered that the severability clause was overlooked in the original bill. Any law that is passed is always subject to challenge and this is just a way of saying if a portion of it is struck down, all would not be lost.

Chairman McKenzie called for the will of the Committee for **S 1387**.

**Senator Malepeai** acknowledged that this is an emotional issue regardless of which side of the issue an individual stands. This legislation has raised awareness about the complexity of the policies and procedures in the medical profession. There are more questions than answers. A conference with a doctor is very personal. For the Committee to rule on this piece of legislation seems to be an intrusion of the privacy of the patient and physician when the decision should rest solely on those two. All cases are not alike. It is not for the government to interfere.

**MOTION:** **Senator Malepeai** moved, seconded by **Senator Stennett**, to hold **S 1387** in Committee

**Senator Hill** stated his appreciation for the testimony on both sides of the issue. The last person who testified made a comment that summarized some of the testimony heard today. She said, not an exact quote, don't let the concern for the unborn influence your decision. **Senator Hill** stated concern for the child was a major factor in his decision.

**SUBSTITUTE MOTION:** **Senator Hill** made a substitute motion, seconded by **Senator Fulcher**, to send **S 1387** to the Senate floor with a do pass recommendation.

**Senator Stennett** voiced a couple concerns. It is not certain that this bill will not affect existing statute in defining what the patient's rights are. In addition, it could dismantle what to do in case of an emergency when there is a choice of saving a patient's life and Idaho State law. Those are huge questions. From **Senator Stennett's** perspective, there is no precedent as far as doing a medical procedure except in cases of criminal behavior. Here, a medical requirement is placed on women before they have chosen to do an abortion and that is equal to criminal, invasive procedures; that is unconscionable. **Senator Stennett** requested a roll call vote.

**Senator Lodge** stated she does have concern for the unborn and that is the choice she will make. She has received information from her church that there are concerns with this legislation and that those concerns were given to the sponsors. They are not opposed to the bill, but they are neutral. So today, **Senator Lodge** will stand for the unborn but she is also concerned for young women who have to undergo these procedures. She is also concerned about the State mandating a procedure when they are fighting against other government mandated issues.

**Chairman McKenzie** asked for further comments. Being none, he instructed the Secretary to take a roll call vote.

**VOTE:** The substitute motion carried by roll call vote.  
Ayes: Darrington, Davis, Hill, Fulcher, Winder, Lodge and McKenzie  
Nays: Malepeai and Stennett.

**ADJOURNMENT:** Being no further business, **Chairman McKenzie** adjourned the meeting at 10:12 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

**AMENDED AGENDA #2**  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Room WW55**  
**Friday, March 16, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>S1372</u></a>	RELATING TO PROCUREMENT of services or personal property by political subdivisions relating to exemption from disclosure.	Senator Winder (Refer out to another Committee)
<a href="#"><u>H 553</u></a>	RELATING TO CIVIL OFFICES to provide for vacancies in elective civil offices.	Representative Trail
<a href="#"><u>H 452</u></a>	RELATING TO BOND ELECTIONS to provide more transparency to existing Idaho law is it relates to bond elections.	Representative Simpson
<a href="#"><u>H 576</u></a>	RELATING TO LEVY ELECTIONS to provide public notice and ballot requirements for levy elections.	Representative Simpson
<a href="#"><u>H 536</u></a>	RELATING TO PARI-MUTUAL BETTING to prevent non-resident simulcast companies from discriminating against Idaho simulcast licensees.	Russ Westerberg, Westerberg Associates
<a href="#"><u>H 518</u></a>	RELATING TO CIGARETTE ROLLING MACHINES to ensure that the use of such machines will not circumvent current laws and undercut the purposes for which they were enacted.	Brett DeLange, Office of the Attorney General
<a href="#"><u>H 368a</u></a>	RELATING TO THE STATEWIDE COMMUNICATIONS INTEROPERABILITY EXECUTIVE COUNCIL (SIEC) to amend current language by extending the sunset clause and to make changes to the make up of the SIEC.	Chief Mark Lockwood, Chief of Police, Sandpoint

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Sen Darrington  
Sen Davis  
Sen Hill  
Sen Fulcher

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, March 16, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Senators Darrington, Davis, Hill, Fulcher, Winder, Lodge, Malepeai, and Stennett

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**H553** RELATING TO CIVIL OFFICES to provide for vacancies in elective civil offices.

**Representative Trail** presented **H553** amending *Idaho Code Section 59-901* to provide for vacancies in elective civil offices at the municipal or county level. **Representative Trail** explained the legislation had been reviewed by the Attorney General's office and would pertain to city or county officials absent from his/her duties for an extended period of time. History of specific examples were reviewed. **Representative Trail** enumerated on procedures outlined in the legislation to fill vacancies. **Senator Davis** questioned the terms "elective civil office" or "civil office." **Representative Trail** yielded to **Brian Kane**, the Attorney General's office. **Mr. Kane** indicated neither term is defined in Idaho Code. *Idaho Code, Section 59-901* deals with vacancies and how they would be filled in both local and legislative offices. The term "civil office" would differentiate from vacancies in offices at the legislative level. Further questions were raised by **Senator Davis** to clarify whether **H553** could be construed to apply to legislative offices. **Mr. Kane** stated that legislative offices were not part of this bill.

**Chairman McKenzie** questioned **Mr. Kane** concerning the term "infamous crime." **Mr. Kane** indicated the term "infamous crime" was being struck and replaced with "felony" for clarity.

**MOTION:** **Senator Davis** moved, seconded by **Senator Winder**, to send **H553** to the floor with a do pass recommendation

**VOTE:** The motion carried by voice vote.

**S1372** **Chairman McKenzie** explained that this bill came back to our committee and should have gone to Transportation Committee.

**MOTION:** **Senator Winder** moved, seconded by **Senator Fulcher**, to refer **S1372** back to the Senate Floor to be referred out to the Senate Transportation Committee.

**VOTE:** The motion carried by voice vote.

**H452** RELATING TO BOND ELECTIONS to provide more transparency to existing Idaho law as it relates to bond elections.

**H452**, presented by **Representative Simpson**, creates requirements of the taxing district to provide a statement of purpose for which the bonds are to be used, disclosure of the interest amount of the bonds, and the retirement or maturity date of the bonds which will promote transparency. **Representative Simpson** pointed out that existing *Idaho Code, Section 34-439* which originally provided for bond elections had no provision to enumerate the purpose for the bond or date of the election. *Idaho Code, Section 34-439* would be replaced with language from **H452**. Questions were asked by **Senator Darrington** and **Senator Davis** concerning taxing districts positions relative to this legislation. **Representative Simpson** answered that no opposition has been revealed from taxing districts.

**MOTION:** **Senator Fulcher** moved, seconded by **Senator Davis**, to send **H452** to the floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote.

**H576** RELATING TO LEVY ELECTIONS to provide public notice and ballot requirements for levy elections.

**Representative Simpson** explained that **H576** was a companion bill to the prior legislation discussed relating to Levy Elections. **Representative Simpson** pointed out that existing Idaho Code did not provide any requirements to the taxing districts pertaining to levy elections and that **H576** would add a new section providing direction and requirements for levy elections, except for those relating to override levies, which typically are not measured in dollars but in percentages. Examples of inconsistencies in levy elections were cited and a sample ballot was reviewed. **Senator Davis** questioned whether the legislation would affect the results of an election or cause trouble in the bond market. **Representative Simpson** yielded to **Tim Hurst**, the Idaho Secretary of State's Office, who indicated no problems were evident in his research. **Chairman McKenzie** questioned if the disclosure would appear on the ballot. **Representative Simpson** explained disclosure would appear on both the ballot and the public notice. **Senator Davis** voiced his opinion that the fiscal note may not be correct because additional costs would occur when printing ballots. **Representative Simpson** clarified that only a minor amount of additional information would need to be published. **Mr. Hurst** concurred.

**Frank Priestly**, President, Idaho Farm Bureau Federation, submitted a letter of support for **H452** and **H576** on behalf of the members of the Idaho Farm Bureau Federation.

**MOTION:** **Senator Winder** moved, seconded by **Senator Davis**, to send **H576** to the floor with a do pass recommendation

**VOTE:** The motion carried by voice vote.

**H536** RELATING TO PARI-MUTUAL BETTING to prevent non-resident simulcast companies from discriminating against Idaho simulcast licensees.

**Representative Henderson** introduced **H536** relating to pari-mutual betting methods used by Idaho residents to place bets on horse racing. **H536** would prevent non-resident, simulcast companies with wagering affiliates, from discriminating against Idaho simulcast licensees, by engaging in anti-competitive practices aimed at eliminating Idaho competition and Idaho jobs for the benefit of out-of-state advance deposit wagering companies. **Representative Henderson** outlined the economic advantages **H536** would have for Idaho.

**Senator Fulcher** asked what would constitute "deceptive practices."

**Representative Henderson** yielded to **Russell Westerberg**, Westerberg and Associates.

**Mr. Westerberg** explained the purpose of the legislation is to protect jobs in Idaho by preventing advanced deposit wagering providers from attempting to recover the advanced deposit wagering source deposit fee which would increase costs. **Mr. Westerberg** enumerated fees associated with betting in Idaho and explained the licensing of simulcast companies that share fees collected during betting. **H536** would require companies wishing to be licensed to collect advanced deposit wagering in Idaho to reach an agreement with Idaho licensed simulcast operators and the Idaho Racing Commission on standard fees to be charged to Idahoans placing bets from home, at an Idaho betting company, or at the race track.

**Senator Davis** questioned the duty to reach a non-discriminatory agreement and what part of the legislation compels negotiations to occur. **Mr. Westerberg** stated that the racing commission needs to determine if discrimination against local providers has happened. **Mr. Westerberg** indicated that the racing commission would act as an arbitrator between Idaho companies and those outside of Idaho to determine if a "good faith" effort to reach an agreement occurred. **Mr. Westerberg** further clarified by citing language contained on page 5 of the bill.

**Senator Hill** was concerned about the possibility of eliminating service providers by controlling amounts paid to them. **Mr. Westerberg** indicated that the service providers could choose not to do business in Idaho but that those providers would still have a part in the negotiations. **Mr. Westerberg** compared fees charged in other states which are lower than those charged in Idaho.

**Chairman McKenzie** inquired whether the problem addressed by **H536** could be controlled by eliminating internet betting in Idaho. **Mr. Westerberg** countered that the legislature could repeal "advanced deposit wagering" in Idaho, but horsemen's organizations in Idaho would not receive their allotted portion of the fees.

**Chairman McKenzie** introduced **Ted Hoffman** from the Idaho State Racing Commission who testified in favor of the legislation. **Senator Davis** asked if there were concerns with the authority of the Racing Commission acting as an arbitrator. **Mr. Hoffman** replied no disagreements or unresolved concerns exist with the legislation and that the Idaho Racing Commission issues licenses to business wishing to operate in Idaho. **Mr. Hoffman** stated that **H536** gives the Commission guidance on cases where such a company wants to operate within Idaho. Services must sell at a fair amount or the license will not be granted. Fair amounts can be negotiated with existing advanced deposit wagering companies because licenses are issued on an annual basis. **Senator Davis** asked for further clarification as to when the Racing Commission could impose terms to an existing advanced deposit wagering company. **Mr. Hoffman** answered that costs are already set for 2012. **H536** would prevent unfair fees charged for following years and that the Racing Commission would only act as an arbitrator if an agreement between companies could not be reached prior to license renewal.

**Senator Stennett** asked about and received clarification regarding different simulcasting companies.

**Jim Grigsby**, one of the owners of Treasure Valley Racing, spoke in favor of the legislation and directed **Senator Davis** to the wording in the legislation that offers authority to the Idaho Racing Commission to arbitrate agreements. **Mr. Grigsby** recounted incidents about companies associated with pari-mutual betting operating in Idaho; reiterating the need to protect Idaho business involved and the intent of the legislation. **Senator Davis** summarized his understanding of the licensing process and asked where in the legislation the Racing Commission was given arbitration authority. **Mr. Grigsby** stated that because the Racing Commission grants the license, the Commission would have the authority to arbitrate a fair fee for the State of Idaho.

**Chairman McKenzie** summarized his understanding of the legislation and asked for clarification concerning signals provided by licensed companies. **Mr. Grigsby** explained that certain companies provide signals and those signals are in demand across the country.

**MOTION:**

**Senator Davis** moved, seconded by **Senator Winder**, to send **H536** to the floor with a do pass recommendation

**Senator Davis and Chairman McKenzie** agreed that the legislation is not about horse racing but about the competitive fairness issue.

**VOTE:**

The motion carried by voice vote.

**H518**

RELATING TO CIGARETTE ROLLING MACHINES to ensure that the use of such machines will not circumvent current laws and undercut the purposes for which they were enacted.

**Brett DeLange**, Office of the Attorney General, presented **H518**. **Mr. DeLange** explained that the legislation deals with large, commercial cigarette rolling machines recently introduced to the market. These machines have the potential of circumventing present Idaho laws and undercut Idaho's Master Settlement Agreement with the tobacco industry. **Mr. DeLange** clarified that **H518** would ensure those persons who offer these machines for use in a commercial context comply with present Idaho laws governing the manufacturing, marketing and sale of cigarettes and certify that compliance to the Attorney General. **Mr. DeLange** indicated that **H518** was not anti-business legislation, but that it was a "level the playing field," public health bill. **Mr. DeLange** then reviewed certain sections and definitions of **H518**, giving examples and justification for the legislation. **Mr. DeLange** reviewed federal requirements to certify types of tobacco brought into the state and explained that the state has to ensure compliance and subsequently, receives tax dollars from tobacco products sold in the state. **Mr. DeLange** cited the section giving the Attorney General's office ability to regulate cigarette rolling machines.

**Senator Malepeai** questioned whether the legislation applies to reservations. **Mr. DeLange** stated **H518** does not change rules relating to tribal sovereignty within the state.

**Kevin Altman**, a consultant for the National Tobacco Company, spoke in support of the legislation. **Mr. Altman** compared traditional "roll your own" cigarette machines with commercial machines and further explained the process a consumer would use to produce and buy cigarettes made by a commercial machine. He explained his company sells tobacco used to "roll your own" cigarettes how it is taxed by the state when purchases are made. **Mr. Altman** said owners of cigarette rolling machines avoid taxes levied by state and local governments by purchasing tobacco that is taxed at a lower rate. He further stated that other states are considering similar legislation.

**Chairman McKenzie** questioned about tobacco companies listed on the state directory and taxes associated therewith. **Mr. Altman** clarified that if cigarette rolling machine companies are required to comply with state directory listings and include differences between pipe tobacco and cigarette tobacco, the result would be the collection of appropriate taxes.

**Steve Rector**, representing Pinnacle Business Group, spoke in opposition to **H518**. **Mr. Rector** requested that **H518** be sent to the amending order to clarify the effect on the Master Settlement Agreement relating to this legislation. **Senator Davis** indicated that even if **H518** were to pass, the legislation in the amendment could be presented at a later time as separate legislation and asked **Mr. Rector** what might be the problems with that proposal. **Mr. Rector** replied that his client wished to amend the current legislation and asked for the support of that amendment. **Senator Winder** asked if **H518** was not amended, would **Mr. Rector** work with the Attorney General to propose future legislation relative to the proposed amendment? **Mr. Rector** stated the unwillingness of the Attorney General's office to discuss the merits of the amendment.

**Mr. Altman** indicated that the Attorney General's office has reviewed and discussed the amendment.

**MOTION:** **Senator Davis** moved, seconded by **Senator Hill**, to send **H518** to the floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote.

**H368A** RELATING TO THE STATEWIDE COMMUNICATIONS INTEROPERABILITY EXECUTIVE COUNCIL (SIEC) to amend current language by extending the sunset clause and to make changes to the make-up of the SIEC.

**Mark Lockwood**, Chief of Police, Sandpoint, Idaho, presented **H368a** relating to the Statewide Communications Interoperability Executive Council (SIEC). **Chief Lockwood** explained that **H368a** would amend *Idaho Code, Section 46-1200* by extending the sunset clause from December, 2012 to December, 2018. He further stated language corrections would be made to the current section of this Idaho Code and that **H368a** would make changes in the make up of SIEC to reflect current needs.

**MOTION:** **Senator Davis** moved, seconded by **Senator Winder** to send **H368a** to the floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote.

**ADJOURNMENT:** Being no further business, **Chairman McKenzie** adjourned the meeting at 10:00 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

AGENDA  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Room WW55**  
**Monday, March 19, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>H 591</u></a>	RELATING TO UNCLAIMED PROPERTY to authorize the State Treasurer to establish rules for redemption procedures for certain unclaimed property.	Representative Luker and Ron Crane, Treasurer
<a href="#"><u>H 635</u></a>	RELATING TO ADMINISTRATIVE RULES to continue certain administrative rules in full force and effect until July 1, 2013.	Mike Nugent, Legislative Services Office
<a href="#"><u>H 572</u></a>	RELATING TO CONSOLIDATION OF ELECTIONS to address changes to election procedures and clarifying candidate affiliation.	Tim Hurst, Chief Deputy, Secretary of State
<a href="#"><u>H 539</u></a>	RELATING TO THE IDAHO VIDEO SERVICE ACT to establish a process for the issuance of a state franchise which will facilitate the entry of new providers of video services into the Idaho market.	Ed Lodge, Century Link
<a href="#"><u>RS21472</u></a>	RELATING TO THE DEPARTMENT OF COMMERCE to provide that the Director is afforded some latitude in title for the purposes of international trade.	Tom Perry, Office of the Governor
<a href="#"><u>S 1383</u></a>	RELATING TO THE MAINTENANCE AND REPAIR OF DITCHES, CANALS AND CONDUITS to codify existing law that the owner or operator of such aqueducts is not liable for wasting water or damage to others that is caused by the acts of third parties or acts of God.	Norm Semanko, Idaho Water Users Association
MINUTES:	February 20	Senator Fulcher and Stennett
	February 29	Senators Winder and Malepeai
	March 2	Senators Davis and Lodge

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie	Sen Winder
Sen Darrington	Sen Lodge
Sen Davis	Sen Malepeai
Sen Hill	Sen Stennett
Sen Fulcher	

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Monday, March 19, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Senators Darrington, Davis, Hill, Fulcher, Winder, Lodge, Malepeai, and Stennett

**ABSENT/  
EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:02 a.m. with a quorum present.

**H 591** RELATING TO UNCLAIMED PROPERTY to authorize the State Treasurer to establish rules for redemption procedures for certain unclaimed property.

**Representative Luker** explained that currently, unclaimed property escheats to the state after ten years without providing a method for the owner to reclaim the property. Idaho is only one of two states that, after a period of time, escheats unclaimed property to the state even if there could still be claim on it. This bill removes that escheat provision with two exceptions. (1) There is a constitutional provision for cases when the property is disposed of through the state but the owner was not identified, then the money goes to the school endowment fund. (2) Property coming from other avenues without owner identification would escheat to the state. Currently, some of that money goes to the endowment fund after five years. **H 591** expands the holding period to 10 years making it consistent. Those properties that would escheat would do so after ten years but the properties that can be identified stays on the unclaimed property rolls. The fiscal note shows that the requests decline over time but there are still people claiming property after the ten year period.

**Representative Luker** said this issue came up last year when they had a property bill on the House side and as they were discussing it, it became apparent that some property had escheated to the state and he inquired as to why property was being taken away when there were people still out there that had a claim on that property. **Senator Davis** said his understanding of the bill is that it increases the time period from five years to ten years. **Representative Luker** said that was half of the bill. The other half is if the funds have a name identified with them, then there was no time limit. After ten years, there would be a transfer to the general fund, but the people could still make a claim. The claims were estimated to be fairly small at about an average of \$40,000/year out of the annual \$2 million transfer. The balance would decline because most of those funds would have already been recovered.

**Chairman McKenzie** asked if this affected unclaimed property where the owner had been identified? **Representative Luker** said it did because it extended the claim right in perpetuity.

**Senator Darrington** wanted clarification that the money that transferred over to the General Fund could be redeemed out of that fund. **Representative Luker** said the claim would be redeemed out of the current transfer going into the General Fund reducing the amount of that transfer.

**Senator Lodge** asked **Chairman McKenzie** to restate what he said about conflict of interest if their names were on the list and he complied. **Senator Davis** commented that, in his case, the President of the Senate determined that he was a part of a class and as such, did not have a conflict of interest.

**MOTION:** **Senator Winder** moved, seconded by **Senator Fulcher**, to send **H 591** to the floor with a do pass recommendation.

**VOTE:** The motion carried by a voice vote. **Senator Fulcher** will be the floor sponsor.

**H 635** RELATING TO ADMINISTRATIVE RULES to continue certain administrative rules in full force and effect until July 1, 2013.

**Mike Nugent**, Legislative Services Office, said **H 635**, better known as the "drop dead bill", continued certain administrative rules in full force and effect until July 1, 2013. He gave a brief history of this bill. **Mr. Nugent** cited a couple of court cases, one being a Supreme Court case, *Holly Care Center versus the Department of Employment*, where the Court commented that if it could, it would strike down the right of the legislature to control administrative rules. To ensure control over any administrative rules the leadership in the legislature came up with *Section 67-5292, Idaho Code*, which stated that all administrative rules would continue in temporary force and effect unless extended by statute. This is that statute and it basically just re-ups the current administrative rules for another year. Another landmark case that gave the legislature the ability to reject administrative rules was *Knee versus Arnell* in 1989. Control over the administrative rules maintains continuity and control over the variety of agencies that report to the legislature.

**MOTION:** **Senator Lodge** moved, seconded by **Senator Winder**, to send **H 635** to the floor with a do pass recommendation.

**VOTE:** The motion carried by a voice vote. **Senator Lodge** will be the floor sponsor.

**H 572** RELATING TO CONSOLIDATION OF ELECTIONS to address changes to election procedures and clarifying candidate affiliation.

**Tim Hurst**, Chief Deputy, Secretary of State's Office, presented **H 572**. This legislation cleaned up various sections of the Idaho Code addressing changes that needed to be made in election procedures that became apparent during the first year of the election consolidation. The legislation also makes it clear that a candidate is required to be affiliated with a political party in order to file for a partisan office that is to be voted on at a primary election. A copy of his testimony is attached to the minutes. He indicated the bill addressed such areas as soil conservation district elections, how results were to be reported in non-partisan elections, recall elections, and recounts. **Mr. Hurst** said that Sections 4 and 5 of the bill clarified two statutes relating to party affiliation required by **HB 351** from last year. Currently, *Idaho Code, Section 34-411A*, says that an unaffiliated voter can select a party prior to voting in the primary election. This change tells how to make that selection prior to appearing at the polls on election day. Section 5 would make it clear that a candidate filing for a partisan office in the primary election would be required to be affiliated with the party at the time of filing.



**Senator Lodge** referred to page five regarding primary elections and was concerned whether the records could be accumulated and sent out before election day given that election day was the cut off date. **Mr. Hurst** said they had a cutoff date thirty days before the elections. However, they also had election registration which sets all of that aside. The statute allows them, in Section 2, line 39, an unaffiliated elector could select a political party affiliation only prior to voting in the primary election. **Senator Lodge** said that at 5:00 p.m., a person could come in and register for a party affiliation when the books were already closed and ready to go out to the precincts the next morning. **Mr. Hurst** said a person was already a registered voter. The books go out to the polls and it shows in the book which party they were affiliated with. If it was blank, that meant they were unaffiliated. **Senator Lodge** said that meant they could vote that day, even if they had put their affiliation in the night before. **Mr. Hurst** said that was correct.

**Chairman McKenzie** asked a question about the second page, lines twenty six-seven, where the line was removed that said the State Soil and Water Conservation Commission paid for these elections. Why was the language taken out? **Mr. Hurst** said that should have been done three years ago when the election consolidation bill was passed. The counties pay all expenses for elections from appropriate monies from the legislature. The only time the state agencies, such as the State Soil and Water Conservation District, payes for an election was for the creation of the district.

**Chairman McKenzie** asked about the process for an affiliated elector to declare another party or to become unaffiliated. What is the time frame for someone who had already declared an affiliation to switch parties or become unaffiliated? **Mr. Hurst** said that would be the last date for filing for office.

**MOTION:**

**Senator Hill** moved, seconded by **Senator Fulcher**, to send **H 572** to the floor with a do pass recommendation.

**VOTE:**

The motion carried by a voice vote. **Senator Hill** will be the floor sponsor.

**H 539**

RELATING TO THE IDAHO VIDEO SERVICE ACT to establish a process for the issuance of a state franchise which will facilitate the entry of new providers of video services into the Idaho market.

**Ed Lodge**, representing Century Link, presented **H 539**. This proposal, the Idaho Video Service Act, established a process for the issuance of a state franchise which would facilitate the entry of new providers of video services into Idaho's video service market and encouraged new private capital investment in broadband infrastructure within the state. The current video service franchising process required that new entrants in the market negotiate with each individual city and county as a precondition to being able to provide video services within the individual local jurisdictions.

**Mr. Lodge** stated that Idahoans want faster, more ubiquitous high speed internet for a variety of reasons and advances in technology currently make it possible for both cable and telecommunications providers to offer voice, high speed internet and multi-channel video services over the broadband infrastructure. The ability for telecommunication and cable companies to provide television service over their broadband networks is a business reason for those companies to enhance their broadband infrastructure throughout the state. This proposal assured quality of treatment between incumbent cable providers and new entrants to the Idaho video service market and, at the same time, would preserve local control and regulation of local government public rights-of-way. This bill continues the rights of cities and counties to receive up to a 5% franchise fee for use of public rights-of-way and continues the opportunity for cities and counties to require video service providers to make dedicated video channels available to the city or county for public, educational, and government use. **Mr. Lodge** said **H 539** is supported

by the Idaho telecommunications industry, the Idaho Cable Telecommunications Association and the Association of Idaho Cities and has been approved by the highway districts and counties.

**Bill Roden**, representing Century Link, provided an overview of the bill addressing various terms including rights-of-way, franchising entity, governing body, and incumbent cable service provider. He talked about a system operator which meant any person or group of persons who provided video service directly, or through one or more affiliates, owned a significant interest in the system or facilities through which the video service was provided, and had been issued a certificate of franchise authority pursuant to the provisions of the chapter. **Mr. Roden** pointed out several ways in which video services could be provided under this act. Under this bill, the incumbent video service provider may, if it chooses to do so, opt to get a certificate of franchise authority and continue its operation under the state franchise cancelling the local franchise.

**Senator Davis** said some providers allowed one to have service sent directly to them, such as iPads, iPhones and the like. Does this language restricted those cable network providers from marketing their service within the state of Idaho? **Mr. Roden** said no. The video service clause on page two included cable service but it excluded any video programming provided to persons in their capacity as subscribers to commercial mobile services or video programming provided as part of a service that enabled end users to access content, information, electronic mail or other services offered over the public internet.

**Mr. Roden** said the most popular way to get a franchise would be part (c) on page three where it stated that "no person shall act as a video service provider or operate a video service network within the state of Idaho unless such person had been granted a certificate of franchise authority to do business in the state of Idaho as a system operator by the Idaho Secretary of State as authorized by this chapter."

**Senator Davis** asked if there was a non-incumbent cable service provider who wanted to service Ada County, would they negotiate with Ada County or go to the Secretary of State? **Mr. Roden** said it was up to the applicant to designate an area in which they wanted to operate. **Senator Davis** said that when they negotiated with the Idaho Secretary of State, if they designated only one county, would the Secretary of State tell them they had to go talk to Ada County? **Mr. Roden** replied no, that would not be permitted under this legislation. **Senator Davis** asked why would a non-incumbent service provider elect to file with the Secretary of State versus the county and what would be some of the policy reasons? **Mr. Roden** said it was doubtful that would happen. To the best of his knowledge, most counties didn't have franchise agreements. He said they had a licensing statute which was considered, under federal law, to be a franchise.

**Mr. Roden** said there was a need for a central location to do all of the filing and to adequately cover the requirements that would normally be covered in a franchise. He said it was difficult to encourage new providers to come to the state, with over 100 cities in the state that could negotiate individual franchises with each of those locations.

**Senator Davis** said that if he were to ask the political subdivisions as defined in this act whether they support the legislation, would they say yes? **Mr. Roden** said it was his understanding they would say yes. He said the two major cities of Boise and Pocatello have worked out their differences and they were in support of this bill.

**Senator Darrington** asked if a non-incumbent operator came in, did the non-incumbent who received the opportunity, have the right to use the lines of the cable system of an incumbent operator in exchange for a fee? **Mr. Roden** said if **Senator Darrington** was talking about interconnection of the facilities that authorized and encouraged using the lines, the legislation did specifically reference and encourage it.

**Mr. Roden** talked about the filing fees, amending fees, notices, and fees regarding the use of public rights-of-way as outlined in the bill.

**Senator Winder** cited a "friendly" lawsuit between the Ada County Highway District and the City of Boise about who actually should receive the franchise fees, since in Ada County there was a broad jurisdiction of ownership under the highway district. The judge decided in favor of Boise City and said they could retain the rights to those franchise fees, even though the right-of-way was owned by ACHD. He said he assumed this did not change that ruling, since the City was showing their support. **Mr. Roden** said he was aware of those discussions. The franchise fees under this bill would go to the political subdivision, i.e., the city or the county that had regulation in that regard. This bill did provide for authority for the highway districts, the state of Idaho, and the county or cities that have the responsibility for maintenance of the streets. The bill specifically provides for additional fees and license fees to be paid to those jurisdictions in connection with any disturbance or work that is in the rights-of-ways. There is a provision ensuring those fees don't become a franchise fee that they should be reasonably related to the jurisdiction.

**Mr. Roden** said there was no state law existing at this time relating to franchises providing services to the State of Idaho. One issue they encountered was how do you define gross revenues related to advertising revenues? Several cities added in a definition of gross revenue and it included revenues from Home Shopping Network and other advertising revenues.

**Senator Davis** said when he looked at the video service provider fee, referring to the bottom of page seven, it said "for the purposes of this section, subscribers whose service address is within the jurisdictional limits of a city shall be deemed city subscribers and those subscribers whose service address is outside the jurisdictional limits of a city shall be deemed county subscribers." Was the building address where the service was actually received? **Mr. Roden** said the fees, in this case, were tied to the service address.

**Senator Davis** asked if the legislation would serve as a barrier to technologies.

**Mr. Roden** said he wanted to go back to the definition of video service which referred to a service that provided this type of communication, which was primarily within the public rights-of-way. He said it was not intended to cover anything related to the internet and referred to the top of page nine. The intent was to provide reasonable financing for the pay channels.

**Mr. Roden** explained the issue of "red lining" which is a concept that a video service provider could determine which areas of political subdivision they were going to service based upon the income levels of the residents of those particular areas. **H 539** covers this issue extensively to ensure that all subdivisions would be treated equally by early involvement by the cities, opportunity for mediation, and court action if necessary. Customer service standards were addressed as well as issues related to PEG (public, educational or governmental) channels such as number of channels and fee amounts. Notices to the viewing audience are required when a channel relocates.

**Mr. Roden** thanked the Committee for the opportunity to make his presentation and he explained it had been a long labor. He said he was very pleased having the Committee work with him and the Cable Association and to bring all of the parties together.

**Ron Williams**, represented the Idaho Cable Telecommunications Association, testified in support of the legislation and said it had been a long and arduous process. The process made all competitors in this area neutral, equitable, and created a competitive market.

**Jason Roak**, Vice President of Data Research, testified in support of **H 539**. He said he believed this bill would encourage competition, streamline the process, and encourage further investment in the infrastructure.

**MOTION:** **Senator Winder** moved, seconded by **Senator Hill**, to send **H 539** to the floor with a do pass recommendation.

**VOTE:** The motion carried by a voice vote. **Chairman McKenzie** will be floor sponsor.

**RS 21472** RELATING TO THE DEPARTMENT OF COMMERCE to provide that the Director is afforded some latitude in title for the purposes of international trade.

**Tom Perry**, Counsel to Governor Otter, presented **RS21472** stating that the RS dealt with the Department of Commerce and provided the Director of Commerce some latitude to use the title of Secretary for the purpose of international trade. He said it aligned and afforded the same latitude as the Director of the Department of Agriculture (*I.D. § 22-101(4)*) when conducting business with foreign counterparts.

**Senator Stennett** said she wanted to make sure she understood that in some cultures, director was not a high enough status and secretary was more recognized as being the title that was more elevated. **Mr. Perry** said that was correct.

**MOTION:** **Senator Fulcher** moved, seconded by **Senator Stennett**, to send **RS 21472** to print.

**Senator Davis** said he didn't see the reason for this RS to come back for another Committee hearing and in the interest of time, was it possible for the motion to be amended to reflect that once it was printed, the Chairman had permission and authority to submit a Committee report with a recommendation that it "do pass" so it could get it to the House for consideration? **Senator Fulcher** said he understood the reason for the RS and he believed it was a justified reason. However, he wanted to amend his motion.

**AMENDED MOTION:** **Senator Fulcher** amended the motion, seconded by **Senator Stennett**, to send **RS21472** to print with the recommendation to send it directly to the floor with a do pass recommendation.

**VOTE:** The motion carried by a voice vote.

**S 1383** RELATING TO THE MAINTENANCE AND REPAIR OF DITCHES, CANALS AND CONDUITS to codify existing law that the owner or operator of such aqueducts is not liable for wasting water or damage to others that is caused by the acts of third parties or acts of God.

**Chairman McKenzie** reminded the Committee they were going on the floor at 9:30 a.m. He said they would try to have the introduction, but they would have to defer debate until the next meeting. **Norm Semanko**, Executive Director and General Counsel of the Idaho Water Users Association, presented this bill.

**Mr. Semanko** stated that **S 1383** was a replacement for **H 398**. The Legislative Committee, composed of 33 individuals from around the state, reviewed this bill at length. This bill, he said, reaffirmed the responsibilities and obligations and clarified the applicable duty of care regarding certain waterways. The bill adopts the standard the courts had applied to avoid wasting of water in *Idaho Code, Section 42-1203* and to prevent damages to others in *Idaho Code, Section 42-1204*. It also made clear that wasting water and damage caused, not by an act or omission of the irrigation delivery entity, but by a third party or an act of God, did not constitute liability on the part of the delivery entity. This was consistent with the standard applied by the courts and as a matter of basic fairness. The bill makes clear that there are no impairments of existing defenses and the belief is, it would make things clear for the water delivery entities, attorneys, and those on the bench. This legislation clarified that the owner of a ditch or canal would not be liable for wasting water or damages caused by others or acts of God.

**Mr. Semanko** said that at the House hearing, the trial lawyers testified that this was existing law, and that irrigation districts and canal companies were not liable for problems caused outside of their control. Without this legislation, it would become more difficult for water managers to have their operations insured for the benefit of the water using public. **Mr. Semanko** further stated, the legislation would help make sure these canals and ditches could continue to deliver water to our farms and fields, subdivisions, schools, and parks. Acts of God, as stated in the bill, must be natural phenomenon, not man-made or artificial. As a result, floods caused by a failure to properly maintain canals as well as gophers and other rodents, would continue to be the responsibility of the canal managers. Liability would continue to be judged on a case-by-case basis under the reasonable care standard adopted by the courts. More importantly, there would be clarification that this would not be a strict liability standard on irrigation. However, the legislation does not provide blanket immunity or eliminate the ability to go to court.

Existing statutes clearly provide that canals must be kept in good repair, ready to deliver water and to avoid damage to others. This wouldn't change. Canal managers are responsible for the failure to do so. However, it would be clear in the statute that as the courts have found, problems caused by third parties and acts of God, were not the responsibility of the canal managers.

**Senator Davis** asked if before the word "caused by" could they put "solely caused by," then the protection would be there and that would do away with the strict liability. If there was a competing claim between the acts of omissions or the acts of a third party or the acts of God, then he would have the language needed to arrive at the comparison. The bill could be sent to the amending order this morning and we could try to hurry the amendments up, put it on the bill, and have it out of here by Wednesday or Thursday. He said he thought that could remove the opposition to the bill or at least soften it enough that instead of putting it off for another day or two, this bill would be done today. Would that be problematic?

**Mr. Semanko** said one concern about putting in the word "solely" was that if the third party or the act of God was responsible and if it was the sole cause. Their concern was what if it was only a contributing cause. The negative influence then would be they would be completely responsible because they hadn't met the threshold of being solely responsible. He said there was language that said that no defenses would be eliminated and contributory negligence was at least a partial defense for irrigation districts. He said on their initial read, the word "solely" could be problematic. If the underlying third party or the act of God clause was not the sole cause, but it was a contributing factor, would they be altering the common law to their detriment?

**Senator Davis** said the purpose was to suggest that one would not be liable for the acts of others and that made sense to him and to the Committee. He wanted to vote for that. **Mr. Semanko** cited a court case where the court found that, while storms caused the problem, it was also caused by the fact that the canal company failed to adequately maintain their dam to manage it correctly, so they were held liable, at least in part, for that dam. This bill encompasses that concept. The intent was not to change the foundation standard. The court would divvy up the various entities who were at fault. But if the word "solely" was put into the bill, then "under comparative negligence" arguably only existed if it was solely caused by an act of God or a third party and it still met the threshold of the word "solely" then they could be held completely responsible. That was the concern of the attorneys. He said unless he heard otherwise from his group, that word wouldn't work. He said he would suggest, because it didn't fundamentally alter the comparative negligence standard, to move the bill to the next session.

**Senator Davis** said that what he was hearing was that neither the proponents or the opponents disagreed as to what **Mr. Semanko** wanted to do. There was just a disagreement as to what the language did and he guessed they would revisit this on Wednesday. **Mr. Semanko** agreed.

**Senator Darrington** said a real-life example was when there was a big cloudburst in July when the canals were running, and the water came down and washed into the canals. Before they could cut it at the head several miles upstream, they had a problem downstream. This is exactly what is being talking about. **Mr. Semanko** said this was correct and it is a serious, important issue.

**Senator Stennett** commented there were some old canals and no matter what one tried to do to maintain those, they were probably a bit more compromised than they were when they were originally constructed. She said she was in complete agreement with **Senator Davis**. There was a combination of acts of God and weather, in addition to the responsibilities of maintaining these waterways, and she hoped they could come to some sort of compromise.

**Chairman McKenzie** announced that discussing on **S 1383** would be continued at the next meeting on March 21st.

**MINUTES:** The approval of the minutes of February 20, 29 and March 2, 2012 were postponed until the next meeting on March 21, 2012.

**ADJOURNMENT:** **Chairman McKenzie** adjourned the meeting at 9:32 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

**AMENDED AGENDA #1**  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Room WW55**  
**Wednesday, March 21, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>HJM 13</u></a>	TO THE PRESIDENT, EXECUTIVE BRANCH AGENCIES AND CONGRESS OF THE UNITED STATES to work to insure that the Border Action Plan on Perimeter Security and Economic Competiveness and the Action Plan on Regulatory Cooperation are effectively implemented in support of the border agreement between the President and the Prime Minister of Canada.	Representative Eskridge
<a href="#"><u>S 1383</u></a> cont. from 3/19/12	RELATING TO THE MAINTENANCE AND REPAIR OF DITCHES, CANALS AND CONDUITS to codify existing law that the owner or operator of such aqueducts is not liable for damage to others that is caused by the acts of third parties or acts of God.	Norm Semanko, Executive Director, Idaho Water Users Association
<a href="#"><u>H 577</u></a>	RELATING TO IDAHO LAW ENFORCEMENT, to give recognition to fire fighting and EMS Medal of Valor recipients.	Representative Crane
<a href="#"><u>HCR 46</u></a>	HONORING AND COMMENDING General Darrell V. Manning for his service to the State of Idaho upon his retirement.	Representative Black
<a href="#"><u>H 443</u></a>	RELATING TO FLAGS to correct issues with the flying of the POW/MIA flag and to give the Division of Veterans Services the responsibility to create rules for proper protocol.	Representative Hagedorn
<a href="#"><u>H 479</u></a>	RELATING TO VETERANS to allow for the managing of funds payable to a resident of a veteran's home of this state.	Representative Bolz and Tamara Mackenthun, Div. of Veterans Services
<a href="#"><u>H 599</u></a>	RELATING TO THE IDAHO STATE HISTORICAL SOCIETY (ISHS) to consolidate ISHS and the Department of Administration records functions of the State Records Center.	Janet Gallimore, Exec. Dir., Idaho State Historical Society
MINUTES:	February 20	Senator Fulcher and Stennett
	February 29	Senators Winder and Malepeai
	March 2	Senators Davis and Lodge
	February 27	Senators Hill and Malepeai
	March 5	Senators Darrington and Davis

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie

Sen Darrington

Sen Davis

Sen Hill

Sen Fulcher

Sen Winder

Sen Lodge

Sen Malepeai

Sen Stennett

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, March 21, 2012  
**TIME:** 8:00 A.M.  
**PLACE:** Room WW55  
**MEMBERS PRESENT:** Chairman McKenzie, Senators Darrington, Davis, Hill, Fulcher, Winder, Lodge, Malepeai, and Stennett  
**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:00 a.m. with a quorum present and announced that there was a full agenda and that some committee members have other obligations and must leave at nine. The first order of business was **HJM 13** which will be presented by **Representative Eskridge**.

**HJM 13**

TO THE PRESIDENT, EXECUTIVE BRANCH AGENCIES AND CONGRESS OF THE UNITED STATES to work to ensure that the Border Action Plan on Perimeter Security and Economic Competativeness and the Action Plan on Regulatory Cooperation are effectively implemented in support of the border agreement between the President and the Prime Minister of Canada.

**Representative Eskridge** explained that **HJM 13** urges the implementation of the agreement between the US and Canada under the two above mentioned action plans which are aimed to streamline cross border trade and at the same time, provide improved intelligence sharing to enhance both countries security. This down economy has forced the US to look for new and innovative ways to create jobs and increase economic growth. When discussing strategies for increasing trade, the most obvious trading relations are already in place between the US and Canadian market. Currently, more than \$1.6 billion in goods and services, as well as 300,000 people, cross the Canadian-US border every day. More than eight million US jobs depend on trade with Canada and over 360,000 jobs in the five Northwest states alone, are dependent on the Canadian relationship. Canada is the largest foreign export destination for the US and they buy more goods and services from the US than Germany and China combined.

**Representative Eskridge** went on to say that 39,900 jobs in Idaho depend on Canada-US trade. Thirty four Canadian owned companies located in Idaho employ 2,742 people, and Idaho sells more goods to Canada than to any other country. These numbers point to an excellent opportunity to look to our closest neighbor to increase jobs and enhance our economic recovery.

In this new border agreement, the leaders of the two companies recognize the interdependence of the economies and the need to work together to improve trade and enhance security for both countries. The effective implementation of these two action plans are instrumental in carrying out the agreement between Canada and the US. The two plans lay out the structure with responsibilities and time lines for success.

**Senator Hill** asked for assurance that there is nothing in these plan documents that is controversial enough to have concerns about. The "Where as" sections seem okay. Are you comfortable with everything in those documents?

**Representative Eskridge** replied that he had read both documents thoroughly and there is some extreme positions but overall, he is comfortable with both documents. The security measures means a working relationship with both countries whether it is joint involvement in inspection of goods or joint activities regarding terrorism. This is the involvement of both countries without infringing on either country's citizens' rights.

**Senator Fulcher** referred to some of the social network/e-mail traffic and asked about the North American Union (NAU). The claims are that the language comes from a White House release dated December 7, 2011, regarding US and Canada beyond regulatory cooperation in support of the NAU. Would you speak to that? **Representative Eskridge** couldn't elaborate on the NAU. These are legitimate agreements between both countries trying to address some of the measures that have been put into place since 9/11 that have impacted economic relations between Canada and the US. **Representative Eskridge** provided a detailed description of the impact those measures have had.

**Senator Hill** accessed the Homeland Security website and quoted one of the comments regarding the Beyond the Border Action Plan. It specifically says that "it was crafted through discussions between our governments and was guided by mutual respect for sovereignty and the respective constitutional and legal framework to protect privacy . . . ." From the federal government's standpoint, they are trying to protect those things.

**Representative Eskridge** commented that Colonel Bill Shawyer, Director, Idaho Bureau of Homeland Security, appeared before the House Committee and he expressed their support for the agreement and reiterated that it protected the national sovereignty for both countries.

**MOTION:**

**Senator Davis** moved, seconded by **Senator Darrington**, to send **HJM 13** to the Senate floor with a do pass.

**VOTE:**

The motion carried by voice vote. **Chairman McKenzie** will be the floor sponsor.

**S1383  
CONT. FROM  
3/19/12**

RELATING TO THE MAINTENANCE AND REPAIR OF DITCHES, CANALS AND CONDUITS to codify existing law that the owner or operator of such aqueducts is not liable for damage to others that is caused by the acts of third parties or acts of God.

**Norm Semanko**, Idaho Water Users Association, reopened the discussion on **S 1383**. The previous discussion identified some concerns with the bill and after that meeting, along with Dan Steenson, Attorney, they addressed those concerns resulting in an amendment to this bill. The amendment makes it more clear that canal company and irrigation district managers are responsible for their own acts or omissions but acts of others are not their responsibility.

**Senator Stennett** stated her questions about the third party qualifications. Since canal ownerships tend to be proprietary and those ownerships may change along the progression of the canal. How is responsibility determined when one ownership manages the waterways better than another one. **Mr. Semanko** responded that if an owner is not taking care of their portion of the waterway, they will be responsible for their acts or omissions whether this passes or not. This will codify and make it more clear that a third party who does not own or operate the facility is responsible for any damage they may cause, although they may not be held to as high a standard as that of a canal or irrigation company. **Senator Stennett** gave an example of an instance where a large canal, like the New York Canal, runs through a congested area and something happens to cause flooding and damage even though the canal may have been adequately maintained so neither the canal company nor the property owners are responsible for the damage. Who is held responsible? **Mr. Semanko** replied that nothing in this bill is going to make that situation any worse. The duty of the waterway owners is to properly maintain all the facilities to prevent the wasting of water. It is not a strict liability so a court will look at the situation and make a determination. This bill will not make the canals stronger or better, it will just make it clearer whose responsibility it is and if it is the canal company's, then that is what insurance is for. It is getting more difficult to get insurance without this type of code in place. Large canals are a major requirement not only to farmers, but to subdivisions, cities, parks, schools, cemeteries, and other facilities.

**Chairman McKenzie** asked about the reference to "storm" as some conditions that would be outside the liability for a canal company. What makes a "storm" under that definition? **Mr. Semanko** answered that it must be a natural phenomenon. There is case law to back up what is and what is not a natural phenomenon or act of God.

#### Public Testimony

**Daniel Luker** on behalf of Idaho Trial Lawyers Association, supports the amendments to S 1383 although they are not in favor of codification within the bill but they withdrew their opposition.

**Robert Hoppie** supports the **S 1383** with the amendments.

**Benjamin Kelly**, Food Producers of Idaho, supports S 1383 and the amendments.

**Senator Winder** asked about the City of Meridian's concerns with placing structures and canals. Is this the same subject or is it a maintenance issue? **Mr. Semanko** said that topic was addressed in **S 1278**. That involves FEMA and whether or not the local governments have the ability to regulate the silting in canals and drains. That bill is being held in the Senate Resources Committee.

#### **MOTION:**

**Senator Hill** moved, seconded by **Senator Winder**, to send **S 1383** to the 14th Order for possible amendment.

#### **VOTE:**

The motion carried by voice vote. **Senator Pearce** will be the floor sponsor.

#### **H 443**

RELATING TO FLAGS to correct issues with the flying of the POW/MIA flag and to give the Division of Veterans Services the responsibility to create rules for proper protocol.

**Representative Hagedorn** explained that **H 443** is a simple statute change. Last year, basic rules were promulgated applying to the POW/MIA flags. It allowed the flying of those flags over specific buildings at the state, county and city level. However, certain other buildings, cemeteries, or memorials that might have a reason to fly POW/MIA flags were not included. This bill deletes the specificity of the language and adds that the flag will be displayed in accordance with the rules promulgated by the Division of Veterans Services (Division).

**Senator Stennett** noted that the POW/MIA flags are the only organizational flags that are codified to fly between the US and the state flags. There is not a definitive manner identified as to how and when these flags should fly.

**Senator Stennett** brought this bill forward because the only POW in Idaho is **Bowe Bergdahl** from Ketchum in District 25. The Governor already has a proclamation about how the flag is to be flown; does this bill keep that order?

**Representative Hagedorn** thanked **Senator Stennett** for the original efforts to codify the handling of these flags. *Section 67-2303A, Idaho Code*, is the new section that has been created to direct the promulgation of the rules by the Division. The Division will use all resources available to determine the proper way to fly these flags. Currently, some of these flags are being flown by executive order. Once this process is completed, the rules will apply and it will not be necessary to have an executive order.

**Senator Stennett** asked if the rules were consistent with the federal declaration currently in place that directs how flags should be flown. **Representative Hagedorn** said the purpose is to focus the activity under one organization to promulgate the appropriate rules.

**Senator Hill** asked for confirmation that the rules the Division promulgate will be the rules the legislature will review. **Representative Hagedorn** answered yes.

**Chairman McKenzie** quoted *Article 14, Section 5* of the Idaho Constitution that says "all military organizations under the laws of this state shall carry no other device, banner, or flag than that of the US or the State of Idaho." That doesn't refer to flying the flag, it refers to carrying no other flag. Have you looked at that issue? **Representative Hagedorn** confirmed that the constitution had been reviewed and that it is not applicable to flying the flag over state buildings and grounds. That section in the Constitution is for State Militia.

**MOTION:**

**Senator Davis** moved, seconded by **Senator Stennett**, to send **H 443** to the Senate floor with a do pass recommendation.

**VOTE:**

The motion carried by voice vote. **Senator Stennett** will be the floor sponsor.

**H 577**

RELATING TO IDAHO LAW ENFORCEMENT, to give recognition to fire fighting and EMS Medal of Valor recipients.

**Fire Chief Karl Malott**, Legislative Advisor, Idaho Fire Chiefs Association, brought **H 577** to the Committee. Currently, the medal of honor is awarded during the National Law Enforcement Recognition Week with a ceremony during May of each year for meritorious service for law enforcement, firefighters, and EMS. **H 577** is a request to move the recognition for the firefighters and EMS to the week of the National Fallen Firefighter Memorial Ceremony which is during the week of 9/11. The current focus of the ceremony is on law enforcement and this would be different in that it would be firefighters and EMS families and crew members in attendance – it would be a better fit for recognition. The law enforcement agency agrees with this move. Since this is in Idaho Code, it requires legislation to make the change. **Chief Malott** provided a history behind the medal of honor.

**MOTION:**

**Senator Lodge** moved, seconded by **Senator Stennett**, to send **H 577** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Chairman McKenzie and Senator Lodge** will be floor cosponsors.

**HCR 46** HONORING AND COMMENDING General Darrell V. Manning for his service to the State of Idaho upon his retirement.

**Representative Black** remarked that it is with a great deal of honor that he is presenting **HCR 46** to the Committee honoring **General Darrell V. Manning**. **Representative Black** provided a history of his service in both the military and as a Representative in the House of Representatives. **General Manning** has given his time and energies over a period of years beginning in 1955 when he enlisted in the Air Force. In 1973 he left the Air Force and joined the Idaho National Guard where he attained the designation of Adjutant and Commanding General of the Guard.

**General Manning** served four terms, 1961-68, as a Representative from District 34 and one term, 1971-72, in the Idaho Senate. He has served on various committees in the House and Senate and a variety of boards and commissions. He was serving as Director of the Department of Transportation when he retired in 2011. This is a resolution to honor a man who has truly served the State of Idaho.

**MOTION:** **Senator Winder** moved, seconded by **Senator Fulcher**, to send **HCR 46** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Senator Hammond** will be the floor sponsor.

**H 479** RELATING TO VETERANS to allow for the managing of funds payable to a resident of a veteran's home of this state.

**Tamara Mackenthun**, Administrative Support Manager, Division of Veterans Services, explained that her duties include acting as the Administrator's Deputy for legislative issues. The Division of Veterans Services, the Idaho Commission on Aging, the state ombudsmen and other stakeholders have worked together to develop this legislation. It will allow an appointed member of the Division to serve as a representative payee for a veteran's income from a variety of sources in cases of financial abuse. It will also allow a Home Administrator to serve, at the request of the veteran or family member, as an authorized financial representative. This legislation clarifies that it is within the scope of the administrator to carry out these duties and will remove the risk of personal liability from a Home Administrator who acts in a similar capacity in certain cases.

There are a number of protections in place for the residents:

- Independent review and determination for a payee.
- Independent medical determination of incapacity to manage own funds.
- Availability of trained/licensed social workers for veteran residents.
- Established due process procedures in case the appointment is contested.
- Use of the trust fund for deposit/withdrawal of funds with rigorous state/VA inspections.
- Strict accounting of current processes in place to manage trust accounts.

**Chairman McKenzie** referred to Section 3, lines 36-38, requiring the administrator to maintain an accounting of the funds. What form does that take? **Ms. Mackenthun** responded that it is like any kind of invoice that would be received from a hospital or nursing home so it would be coded and put in the resident's file to be available for review.

**MOTION:** **Senator Lodge** moved, seconded by **Senator Winder**, to send **H 479** to the Senate Floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Chairman McKenzie and Senator Lodge** will be floor cosponsors.

**H 599** RELATING TO THE IDAHO STATE HISTORICAL SOCIETY (ISHS) to consolidate ISHS and the Department of Administration records functions of the State Records Center.

**Senator Darrington** stated that records management is a very complex subject and, as a member of the State Historical Records Advisory Board (SHRAB), he has come to appreciate that fact. There are two good records centers in the state: The Idaho State Archives under the Idaho State Historical Society and the State Records Center under the direction of the Department of Administration. Both are very well managed entities. This proposal has been studied for a long time and it is the right thing to do to merge the two records centers into one under the direction of the Idaho State Historical Society for efficiency, cost recovery, and accessibility to the records by the general public. Both agencies bless this merger. **Representative Black** is in the audience and is also a member of the SHRAB Board. **Senator Darrington** introduced **Janet Gallimore**, Executive Director, Idaho State Historical Society, to explain **H 599**.

**Ms. Gallimore** recalled the special hearing presentation where a detailed assessment of the records management functions of the State Records Center and Idaho State Archives proposed merger under the Idaho State Historical Society was presented to the Committee. The first phase of the initiative was to amend *Idaho Code, Section 67-4126* to establish provisions for Records Management Services under the Idaho State Historical Society. **Ms. Gallimore** walked the Committee through the new language in the bill that outlined the establishment of a fund to accommodate current and future cost recovery efforts to pay for services rendered; added a new section for the partnership between the State Historical Society and the Department of Administration; deleted the standard filing system; and added language regarding electronic protocols. It also deletes the authority of the Department of Administration for records management functions. A fact sheet that outlines the key background, purpose, and vision is included as part of these minutes.

Testimony

**Alan Virta**, experienced archivist representing himself and the Idaho State Historic Records Board, spoke in support of **H 599**.

**Zaine Baird**, Management Assistant, Idaho Department of Correction whose job is to coordinate the records management at the Department and on behalf of the Department, supports **H 599**.

**Scott Swanson**, Records Program Manager, Transportation Department, supports the merger of the two records centers.

**Seth Grigg**, representing the Idaho Association of Counties, supports the consolidation of the records centers. Local governments house a lot of records with the State Archives and so the greater the efficiency, the greater the opportunity to provide benefit to local administrations. They have been part of the group working on this program.

**Justin Ruen** had to leave but left word that Association of Idaho Cities supports this program.

**Marty Peterson**, citizen of Boise, worked on the task force that put this legislation together with a viewpoint from several directions: local government, state agency, historical society, and user of state archives as research tools. **Mr. Peterson** strongly supports this legislation.

**MOTION:** **Senator Winder** moved, seconded by **Senator Fulcher**, to send **H 599** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Senator Darrington** will be the floor sponsor.  
**Chairman McKenzie** thanked **Senator Darrington** for serving on the SHRAB Board and for helping with this legislation.

**MINUTES APPROVAL:** February 20, 2012: **Senator Stennett** moved, seconded by **Senator Fulcher** to approve the minutes of February 20, 2012. The motion carried by voice vote.

February 29, 2012: **Senator Winder** moved, seconded by **Senator Fulcher**, to approve the minutes of February 29, 2012. The motion carried by voice vote.

March 2, 2012: **Senator Davis** moved, seconded by **Senator Lodge**, to approve the minutes of March 2, 2012. The motion carried by voice vote.

February 27, 2012: **Senator Hill** moved, seconded by **Senator Winder**, to approve the minutes of February 27, 2012. The motion carried by voice vote.

March 5, 2012: **Senator Darrington** moved, seconded by **Senator Fulcher**, to approve the minutes of March 5, 2012. The motion carried by voice vote.

**ADJOURNMENT:** Being no further business, **Chairman McKenzie** adjourned the meeting at 9:20 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

**AMENDED AGENDA #1**  
**SENATE STATE AFFAIRS COMMITTEE**  
**8:00 A.M.**  
**Room WW55**  
**Friday, March 23, 2012**

<b>SUBJECT</b>	<b>DESCRIPTION</b>	<b>PRESENTER</b>
<a href="#"><u>S 1386</u></a>	RELATING TO THE MILITARY DIVISION to establish a State Directorate of the Civil Air Patrol Idaho Wing under the Idaho Military Division and Department of Homeland Security.	Senator Winder
<a href="#"><u>HCR 47</u></a>	STATING LEGISLATIVE FINDINGS to authorize and approve the Department of Administration to enter into an agreement with the State Building Authority to provide financing for the construction of a multi-level parking facility.	Senator Winder
<a href="#"><u>H 575</u></a>	RELATING TO TRADEMARKS to cause all trademark filings to use only the international classification of goods and services	Jeff Harvey, Secretary of State
<a href="#"><u>H 372</u></a>	RELATING TO MINERAL RIGHTS ON STATE LANDS to revise the interest rate for violations of the statutes for mineral extractions.	Chris Halvorson, Idaho Endowment Fund Investment Board
MINUTES:	March 7	Senators Lodge and Fulcher
	March 9	Senators Darrington and Winder
PAGE GRADUATION:	Graduation of Page, Nathan Chelson	

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie	Sen Winder
Sen Darrington	Sen Lodge
Sen Davis	Sen Malepeai
Sen Hill	Sen Stennett
Sen Fulcher	

COMMITTEE SECRETARY

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MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Friday, March 23, 2012

**TIME:** 8:00 A.M.

**PLACE:** Room WW55

**MEMBERS PRESENT:** Chairman McKenzie, Senators Darrington, Davis, Hill, Fulcher, Winder, Lodge, Malepeai, and Stennett

**ABSENT/  
EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 8:01 a.m. with a quorum present.

**S 1386** RELATING TO THE MILITARY DIVISION to establish a State Directorate of the Civil Air Patrol Idaho Wing (ICAP) under the Idaho Military Division and Department of Homeland Security.

**Senator Winder** presented **S 1386** which establishes a mission and places the command and control of the (ICAP) under the duly appointed officer of such wing. The legislation would legitimize the ICAP in Idaho and authorize many of those services the ICAP is now receiving. **Senator Winder** described existing services provided and current inadequate facilities stating that as a result of **S 1386**, facilities could be provided for the ICAP at Gowen Field.

**MOTION:** **Senator Darrington** moved, seconded by **Senator Winder**, to send **S 1386** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Senator Winder** will be the floor sponsor.

**HCR 47** STATING LEGISLATIVE FINDINGS to authorize and approve the Department of Administration to enter into an agreement with the State Building Authority to provide financing for the construction of a multi-level parking facility.

**Senator Winder** reviewed the history of **HCR 47** and addressed parking issues for the public as well as government employees. **Senator Winder** yielded to **Jeff Youtz**, Director of the Legislative Services Office, to explain further.

**Mr. Youtz** recounted the critical parking shortage at the Capitol Mall that has existed for twenty-five years, enumerating the number of permits sold each year compared to the number of parking spaces. He stated that due to the recent Capitol restoration and expansion, the focus of the Capitol was directed toward public outreach and public participation; current lack of parking facilities hamper that goal. **Mr. Youtz** explained that due to favorable interest rates used to refinance bonds, funds have been made available to pay for the parking structure with the addition of increased fees for parking passes. **Mr. Youtz** further explained future revenue streams that would be used to finance the structure and possible locations for said structure.

**Senator Davis** questioned whether public parking uses have been factored into the budget for the structure. **Mr. Youtz** indicated that, to his knowledge, use by the public had not been factored into the financing presented before the committee, but that the structure will make parking more convenient and accessible for legislators, employees and the public.

**MOTION:** **Senator Winder** moved, seconded by **Senator Stennett**, to send **HCR 47** to the Senate floor with a do pass recommendation.

**VOTE:** The motion carried by voice vote. **Senator Winder** will be the floor sponsor.

**H 575** RELATING TO TRADEMARKS to cause all trademark filings to use only the international classification of goods and services.

**Jeff Harvey**, Secretary of State's Office, explained that **H 575** removed the maintenance of two distinctly different classifications of goods and services, causing all trademark filings to use the international classification of goods and services, as adopted by the United States Patent and Trademark Office. **Mr. Harvey** recounted the history of handling trademarks at the Secretary of State's office and that **H 575** would be implemented as new trademarks are filed. **Mr. Harvey** explained that this legislation would allow the Secretary of State's office to provide online filing of trademarks.

Clarification concerning current filing procedures and the trademark review process was summarized by **Senator Davis**. **Mr. Harvey** agreed that Senator Davis' summary was correct.

**MOTION:** **Senator Hill** moved, seconded by **Senator Lodge**, to send **H 575** to the Senate floor with a do pass recommendation

**VOTE:** The motion carried by voice vote. **Senator Lodge** will be the floor sponsor.

**H 372** RELATING TO MINERAL RIGHTS ON STATE LANDS to revise the interest rate for violations of the statutes for mineral extractions.

**Chris Halvorson** with the Endowment Fund Investment Board (EFIB), explained that **H 372** revises the interest rate charged when someone illegally extracts minerals on state lands which are typically sand and gravel. **Mr. Halvorson** stated that current statutes require that an average interest rate from the endowment funds be used to calculate damages but that the current investment program does not lend itself easily to the calculation of an annual interest rate. **Mr. Halvorson** stated that **H 372** would allow the use of the interest rate set by the Idaho Treasurer, which is set annually on July 1 using a statutory calculation based on the average yield of United States Treasurer Securities.

**Senator Hill** asked for confirmation that the intent of **H 372** was not to increase or decrease the interest rate, but that **H 372** would be for administrative purposes. **Mr. Halvorson** stated that the interest rate would be changed to a commercially standard rate. **Senator Davis** asked if the rate used in the legislation would be a default of 12% or whether the intent of the legislation was to use the floating rate. **Mr. Halvorson** indicated that the intention would be to use the floating rate. **Senator Davis** enlightened the committee concerning the history of interest rates charged in judgments and asked what rates have been used in the last ten years. **Mr. Halvorson** answered that he was not knowledgeable of the rate over the past ten years but that the current rate was at 5 1/4%.

**MOTION:** **Senator Winder** moved, seconded by **Senator Hill**, to send **H 372** to the Senate floor with a do pass recommendation

**VOTE:** The motion carried by a voice vote. **Senator Hill** will be the floor sponsor.

**MINUTES APPROVAL:** Minutes for March 7 and March 9, 2012.

**MOTION:** **Senator Lodge** moved, seconded by **Senator Darrington**, to approve the minutes of March 7, 2012.

**VOTE:** The motion carried by voice vote.

**MOTION:** **Senator Darrington** moved, seconded by **Senator Winder**, to approve the minutes of March 9, 2012.

**VOTE:** The motion carried by voice vote.

**PAGE RECOGNITION:** Recognition of Page **Nathan Chelson**.

On behalf of the Committee, **Chairman McKenzie** awarded **Nathan Chelson** with a Letter of Recognition and a watch. **Mr. Chelson** also received a letter of recommendation from the Chairman of the Committee.

**ADJOURNMENT:** There being no further business, **Chairman McKenzie** adjourned the meeting at 8:35 a.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary

AGENDA  
**SENATE STATE AFFAIRS COMMITTEE**  
4:00 P.M.  
Room WW55  
Wednesday, March 28, 2012

SUBJECT	DESCRIPTION	PRESENTER
<a href="#">H 693</a>	RELATING TO THE DEPARTMENT OF ADMINISTRATION to provide for rules governing the Capitol Mall and to provide for enforcement of such rules.	Teresa Luna, Department of Administration
Minutes:	March 23, 2012	Senators Hill and Lodge

***If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.***

COMMITTEE MEMBERS

Chairman McKenzie  
Sen Darrington  
Sen Davis  
Sen Hill  
Sen Fulcher

Sen Winder  
Sen Lodge  
Sen Malepeai  
Sen Stennett

COMMITTEE SECRETARY

Twyla Melton  
Room: WW42  
Phone: (208) 332-1326  
email: [tmelton@senate.idaho.gov](mailto:tmelton@senate.idaho.gov)

MINUTES  
**SENATE STATE AFFAIRS COMMITTEE**

**DATE:** Wednesday, March 28, 2012  
**TIME:** 4:00 P.M.  
**PLACE:** Room WW02  
**MEMBERS PRESENT:** Chairman McKenzie, Senators Darrington, Davis, Hill, Fulcher, Winder, Lodge, Malepeai, and Stennett  
**ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**Chairman McKenzie** called the meeting to order at 4:22 p.m. with a quorum present and thanked the audience for their patience.

**H 693** RELATING TO THE DEPARTMENT OF ADMINISTRATION to provide for rules governing the Capitol Mall and to provide for enforcement of such rules.

**Teresa Luna**, Director, Department of Administration, introduced **H 693** explaining that the legislation is designed to clarify and formalize the authority of the Director of the Department of Administration to put in place rules governing public conduct in the capitol mall, to better define the capitol mall properties and to allow other agencies to apply the rules governing the capitol mall to their agency's property upon approval of the Legislature.

The need for these clarifications became clear during the litigation concerning the use of the Capitol Annex. The legislation is designed to clarify that the Department can create uniform neutral standards through the rulemaking process. Interested parties, including the public and state agencies, may comment on the rules and request revisions.

**Ms. Luna** proceeded to go through the history of the bill and explained each of the provisions of the bill. Page one, lines 16-19, authorizes the Director of the Department of Administration (Director) to have exclusive control of the capitol mall properties identified in subsection (2) of Section 1 and shall have the authority to promulgate rules relating to the use of those properties including the requirement of permits for the use of such properties.

Subsection (2) defines the types of properties and the systems that are included under the authority of the Director. See page one, lines 24-42 and page two, lines 1-14. Subsection (c) excludes the interior of the capitol building itself.

Subsection (3) permits other State of Idaho entities to use the promulgated rules upon a request to the Director. Those entities can "opt in" with the consent of the legislature during the rulemaking process.

Subsection (4) gives the responsibility for law enforcement for the capitol mall properties to the Idaho State Police and Subsection (5) is the original language of the statute. Subsection (6) outlines who has control of the interior of the capitol building.

Section 2 is a requirement that the Department of Administration promulgate rules within thirty days of the signing of this bill.

Section 3 is an emergency clause.

**Senator Stennett** asked how far out will this jurisdiction be extended. **Ms. Luna** responded that it would be the blocks immediately surrounding the capitol and what is traditionally referred to as the capitol mall. **Ms. Luna** listed the names of the buildings that would be included. There are also buildings owned by various departments that are two blocks away that would be covered by the "opt in" clause if they decided to use it.

**Senator Stennett** inquired about who would be in charge if this bill passed. Is it correct that the power is granted solely to the Director? **Ms. Luna** answered that the legislation gives the power to the Director to promulgate the rules, then it must go through the rulemaking process with final approval by the legislature. **Senator Stennett** asked if there was adequate staff to manage all these additional properties with the added responsibilities. **Ms. Luna** said that they are currently managing these properties, they just don't have the authority to promulgate any rules that allows them to manage with any authority. **Senator Stennett** pointed to Judge Winmill's decision, how would this bill allow similar activities without being in conflict with the Judge's decision? **Ms. Luna** stated that the rules would reflect the Judge's orders. **Senator Stennett** noted that there was nothing in the bill to direct what would or wouldn't be allowed on the capitol mall. Would the mall still be open to a reasonable public display, or speech, or rights to assemble after this bill is passed? **Ms. Luna** answered yes.

**PUBLIC  
TESTIMONY:**

**Chairman McKenzie** provided an outline of the procedures to follow during the public testimony portion of the meeting.

NOTE: Most of those who testified also submitted their written comments and those will be included as part of the minutes.

**Shavone Hasse**, testified in opposition.

**Senator Davis** explained that the administrative rules come back to the legislature for approval. But, before that can happen, the legislature must give an entity the authority to promulgate the rules. That process is outlined in the Idaho Administrative Procedure Act and is confirmed by *Knee versus Ardell* which states that the rules must be reviewed and if they are not content neutral, they will be rejected. Rules that disadvantages any organization and gives an advantage to others would not be acceptable. The legislature will be looking for content neutral rules when they come back next year for review and approval. **Ms. Hasse** stated it was her understanding the authority already exists to promulgate rules to maintain property. In addition, this bill has an emergency clause that says it goes into effect as soon as it passes which means the rules they are planning to pass will be in effect immediately and will not go before the legislature until next year. **Senator Davis** noted that they use a negotiated rulemaking process, and the emergency clause is to allow the process to begin immediately. Public comment input will be considered throughout the process so the rules will be content neutral. Although the Senator cannot speak for the Director, experience says that is the intent.

**Senator Winder** requested that **Dennis Stevenson** give an overview of the rulemaking process after the public testimony segment is finished.

**Gene Bray** testified in opposition.

**Senator Stennett** asked for **Mr. Bray's** opinion about the overlap of this bill with other Idaho codes. **Mr. Bray** provided an example, i.e., the capitol properties are enumerated in other code and it would be sufficient for this bill to refer back to that part of code. The same would be true with parking rules and fees.

**Cyndi Tiferet** testified in opposition (no written testimony).

**Edward Waters** testified that the bill is flawed and should be sent to "general orders" (no written testimony).

**Anne Hausrath** testified in opposition.

**Senator Davis** appreciated the comments and went on to explain the difference between a pending rule and a temporary rule and how each of those are processed. **Ms. Hausrath** pursued her concern that one nonelected person has the authority to promulgate rules in thirty days – it can't be done.

**Mary Reali**, District 21, testified in opposition.

**Katie Fite** testified in opposition.

**Fairy Hitchcock** testified in support.

**Roger Brown**, Governor's Office, testified in support.

**Senator Davis** asked for assurance that the promulgated rules would be content neutral and that input will be considered before the temporary rules are adopted.

**Mr. Brown** explained that the Governor's position is to make this process conducive to allow proper maintenance, safety, and for equal access to the capitol mall.

**Barbara Kemp**, Boise, testified in opposition.

**Angel Glen Garity**, Nampa, ID, testified in opposition.

**Dean Gunderson**, District 19, supports this bill because he is involved with the group in the current lawsuit and even though they have a strong case, a set of promulgated rules will prove a pattern of behavior on the part of the State to overstep the court. He would like to have "this last nail in the coffin of the State's case in his tool kit."

**Rachael Raue** Namp, ID, testified in opposition.

**Chairman McKenzie** called for more testimony. Being none, **Ms. Luna** was asked for closing statements.

**Senator Stennett** quoted from *Idaho Code, Section 16-6704* that discusses the Director's authority to promulgate rules pursuant to Idaho Code governing access and use by the public, of the capital building and its grounds. You are moving forward independently to develop temporary rules, is that correct? **Ms. Luna** responded that *Section 16-6704* applies only to the capitol building and its grounds which are governed by the Executive Branch and Legislature. The Department of Administration is the landlord to all other properties defined as the capitol mall. If the question is, "does the Director have the authority to do that unilaterally," the answer is yes. But, it must be done through the promulgated rule process and that will require public input and final approval by the legislature before they become permanent.

**Senator Stennett** referred to the "exclusive control" language of the bill. What is the code that gives the Department the authority to operate other properties besides the capitol? **Ms. Luna** said that *Idaho Code, Section 67-5709*, allows the Director to maintain personnel and operating expenditures incurred in the operation and management of the State Capitol Mall and its multi agency facility.

**Senator Hill** requested the legal definition of "threatened" as in threatened violation. Why would someone be sued because of threatened violations? **Ms. Luna** deferred to **Michael Gillmore** from the Attorney General's Office. **Mr. Gillmore** stated that the normal standard for injunctive relief against threatened or continued violations, for example, the injunction from Judge Winmill in this case, was against a threatened violation of first amendment rights because there had been no removal of camping equipment at that time. To his knowledge, **Mr. Gillmore** said there are no threatened violations in that sense. A group that tries to displace another group that had a permit to occupy a space might be a threatened violation. **Senator Hill** asked if this is a common term in legal jargon?

**Mr. Gillmore** answered that when one goes to court for injunctive relief, the standards are against threatened or continued or existing violations of the law.

**Senator Malepeai** asked **Ms. Luna** about the emergency clause. What is the emergency in implementing the contents of this legislation instead of waiting until July 1st? **Ms. Luna** responded that it is really about the upcoming spring and summer maintenance schedule. In order to maintain the properties, they need the authority to do so.

**Senator Stennett** continued on that note; with Judge Winmill's decision, those tents are allowed to be there, how will that change by passing this bill? **Ms. Luna** said they don't intend to violate the judges ruling. There are several parcels of property on capitol mall that they need the assurance they would be able to maintain them through the upcoming spring and summer. **Senator Stennett** asked if the existing tents will remain even if this bill is passed. **Ms. Luna** answered that they will comply with the Judge's orders.

**Senator Winder** requested that **Mr. Stevenson** explain the rulemaking process. **Mr. Stevenson** explained how the process works from promulgating the rules, publishing them, receiving input, issuing temporary rules and then presenting them to the legislature for approval or rejection. It is a complicated process.

**Senator Fulcher** submitted that it was interesting to listen to the testimonies and read the messages that have come forward with this issue. There seems to be widespread agreement on the need to appropriately manage property. The disagreement occurs when deciding who will do it and how it will be done. There is a strong belief that liberty is being threatened from both sides of the question. The Department is in place with the mechanism to deal with the management of these properties and it seems they don't have the tools to do what is needed.

**MOTION:**

**Senator Fulcher** moved, seconded by **Senator Hill**, to send **H 693** to the Senate floor with a do pass recommendation.

**Senator Davis** commented that this bill is really the management of the assets of the State of Idaho. If this is carried out responsibly, in a way that is content neutral, and they pledge to comply with the orders of the court, then the Senator will support the legislation as written. However, if rules come back that are not content neutral, he will have a difficult time supporting the legislation.

**Senator Winder** stated that this really deals with equal public access to property. There is a good history of the State managing equal access to the steps of the capitol as shown this past week. Others should have access to the property and there shouldn't be a permanent display. There can be opportunities for free expression which is one of the greatest rights we have in this country and no one on the Committee wants to lose that.

**VOTE:**

The motion carried by voice vote. **Senator McKenzie** will be the floor sponsor.

**MINUTES:**

March 23, 2012

**MOTION:**

**Senator Hill** moved, seconded by **Senator Lodge**, to accept the minutes of March 23, 2012.

**VOTE:**

The motion carried by voice vote.

**ADJOURNMENT:**

Being no further business, **Chairman McKenzie** adjourned the meeting at 5:50 p.m.

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Senator McKenzie  
Chairman

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Twyla Melton  
Secretary